

Thailand's Bittersweet Victory over Big Pharma

Thailand takes one for the team on AIDS drugs

Monday 30 April 2007, by [TEN KATE Daniel](#) (Date first published: 13 April 2007).

India, Pakistan, Brazil, China, Indonesia, Ukraine and governments from nearly 40 other countries can all thank Thailand government for cheaper prices of Abbott Laboratories' anti-AIDS drugs Kaletra and Aluvia.

The US-based pharmaceutical company announced Wednesday it would slash the price of the second-line antiretrovirals for 45 low and middle-income countries to \$1,000-per-patient per year from \$2,200 previously.

The agreement, brokered after World Health Organization (WHO) Director-General Margaret Chan recently approached Abbott, appears at first glance to signal a victory for Thailand in its ongoing dispute with the company over its drug prices but in fact Thailand is paying a price for its action.

The row started in January when Thailand announced it would issue a compulsory license for Kaletra, as it had previously done with other antiretrovirals and the heart disease drug Plavix. Abbott quickly responded by pulling registrations for seven new drugs in Thailand, including Aluvia, a heat-stable form of Kaletra that eliminates the need for refrigeration — crucial for AIDS patients in a warm weather climate.

But although Thai patients will be able to receive Kaletra at the new \$1,000 price, Abbott is still singling Thailand out by refusing to register Aluvia in the country, which means Thai patients can't access the drug at all. By doing so, Abbott is punishing Thailand for exercising its rights under the World Trade Organization's agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), while some 44 other middle-income countries reap the benefits of its bold moves.

"It's not just that Thailand threatened to issue compulsory licenses, but it actually went ahead and signed them," said Paul Cawthorne, the head of mission for Medecins Sans Frontieres (MSF) in Bangkok. "Brazil threatened a compulsory license and received a price reduction for itself. Thailand issued a compulsory license and got a worldwide price reduction. Certainly it was a PR disaster when Abbott said it would pull its drugs from Thailand, and now they are trying to scrape themselves back. Other countries around the world should be thankful to Thailand, even though Thailand is still suffering."

Abbott has developed a reputation over the years as one of the toughest negotiators on HIV/AIDS drugs. In 2004, the Chicago-based company stunned AIDS patients around the globe — and some of its own shareholders — when it said it would raise the price of the antiretroviral Norvir by 400 percent.

Abbott said the move was necessary because it had under-priced the drug for years, but the Wall Street Journal reported earlier this year that the price spike was done to increase the price of two rival drugs taken in conjunction with Norvir, which would result in more sales of its own Kaletra.

Internal company documents warned the move would make Abbott look like a “big, bad, greedy pharmaceutical company,” according to the Journal, but Abbott executives reportedly thought the profits gained would outweigh any short-term controversy.

The price increase is now the subject of an anti-trust lawsuit in US federal court. The Democrat-controlled House of Representatives also may open hearings on whether Abbott artificially inflated Norvir’s price, The Hill, a Washington DC-based newspaper, reported last month.

For Kaletra, Abbott said in a statement this week, that it lowered the price “to further increase access and address the debate around pricing of HIV medicines: by increasing affordability while preserving the system that enables the discovery of new medicines.”

Thailand will not get Aluvia or other new drugs, however, because “the Thai action does not support long-term research and development,” Melissa Brotz, an Abbott spokeswoman, said in an interview.

“The developing world pays a significant amount for innovation and middle-income countries will have to pay some share,” she said. “Our position is that nations need to pay their share of innovation costs. If 10 or 15 years ago people didn’t respect patents, these drugs wouldn’t be available today.”

Brotz also flatly denied that Abbott’s move to reduce the price of Kaletra in 45 countries was related to Thailand’s decision to issue a compulsory license for the drug, despite the conspicuous timing and increased calls for renewed boycotts of Abbott products. Two years ago, Abbott offered Brazil a discount on Kaletra after it threatened to use a compulsory license, but the price was not disclosed.

“This is not in response to Thailand,” she said. “We are always evaluating pricing with regards to changes in the environment.”

Perhaps most importantly, Brotz declined to comment when asked if Thailand’s move to issue a compulsory license for Kaletra was legal under the WTO’s TRIPS agreement. “I don’t think we’re going to comment on TRIPS,” she said.

Indeed, Thailand’s recent moves to issue a compulsory license for Kaletra and other drugs — like Merck’s antiretroviral Efavirenz and Plavix, a blood-thinning drug marketed by US company Bristol-Myers Squibb — are completely legal under TRIPS.

The agreement clearly says countries have the right to issue compulsory licenses in cases of national emergency, extreme urgency, or public non-commercial use. The WHO’s Chan, who brokered the deal with Abbott, even wrote the Thai government in January to say its decision to issue compulsory licenses was “fully in line with the TRIPS agreement.”

Moreover, the World Bank stated in a report last August that Thailand should resist pressure from Big Pharma and use compulsory licenses to help bring down its drug costs.

“Because the drugs used in second-line therapy are patented, produced, and sold by multinational pharmaceutical corporations, Thailand must either pay the high prices demanded by those monopolies or exercise its rights under World Trade Organization (WTO) treaties to grant a compulsory license for the manufacture of the drug, subject to negotiated royalties,” the report said.

It adds: “Because Thailand stands to gain a great deal from bilateral agreements to reduce trade barriers with trading partners such as the United States, the Royal Thai government may be tempted to relinquish its rights to grant compulsory licenses for AIDS drugs in exchange for proffered trade advantages. The report finds that the cost of such concessions would be large.”

The World Bank said Thailand could cut the costs of second-line HIV/AIDS therapy by 90 percent, or \$3.2 billion, through 2025 by issuing compulsory licenses.

Although the September coup has indefinitely stalled bilateral trade talks with the US, Abbott's moves to pull some drugs demonstrates the ramifications of actually seeking to implement the protections offered by the WHO. Abbott is quick to accuse Thailand of disregarding the patent system, but it refuses to acknowledge that the government's actions are perfectly consistent with a multilateral agreement dealing with intellectual property rights that was signed by the United States and every other WTO member.

The WHO is similarly ambiguous on the matter. When asked if the WHO supported Abbott's move to withdraw Aluvia from Thailand, spokeswoman Christine McNab referenced a portion of Abbott's press release, which states: "Specifically, with regard to Thailand, Abbott appreciates and fully respects the suggestion of Director-General Chan that more work needs to be done with the government of Thailand to achieve a positive outcome."

"The issue is now one for Abbott and Thailand to work through the details," she added.

Maybe Abbott will come around and register the drug in Thailand, but it's unclear what incentive it will have to do so. It took the international pressure off its back by lowering drug prices in many countries that would normally be sympathetic towards Thailand's plight, and even received a stamp of approval from the WHO. If Aluvia is not offered in Thailand, the WHO-brokered deal with Abbott will also have the effect of deterring countries in the future from following the TRIPS agreement and issuing compulsory licenses for essential drugs.

Though Abbott's strategy may be to isolate Thailand by providing 44 other middle-income countries with much cheaper Aluvia, the dispute itself affects every country. For if Thailand is punished simply for doing what the TRIPS agreement says is legal, then essentially those multilateral deals are nothing more than meaningless pieces of paper, and the debate over intellectual property rights moves back to square one.

"This case shows that if a country tries to use the TRIPS agreement then they will be really hit hard by the pharmaceutical industry," said MSF's Cawthorne. "It brings into question whether the whole thing is dead in the water."

P.S.

* From Asia Sentinel:

http://www.asiasentinel.com/index.php?option=com_content&task=view&id=450&Itemid=32