

Tuesday February 19, 2008

Mr. Chaiya Sasomsab
Minister of Public Health
Tiwanont Rd.
Talad Kwan District
Nontaburi Province 11000
Thailand
Sent via facsimile

Dear Minister Chaiya Sasomsab,

Re: Possible influence of groundless threats from U.S. brand-name pharmaceutical industry on Thai Compulsory Licensing Policy

According to news accounts in the Thai press, the Thai government is reviewing a series of compulsory licenses for cancer drugs issued by the previous government, but not yet implemented. We support the implementation of these licenses, because they offer the prospect of making essential medicines available to people who need them but otherwise will be denied access.

News accounts we have seen report that PhRMA, the U.S. brand-name pharmaceutical industry trade association, has threatened that, if Thailand implements the compulsory licenses on cancer drugs, it will lobby to have Thailand designated a "Priority Foreign Country" under the Special 301 process.[1] This designation poses the possibility of accompanying trade sanctions.

Although PhRMA is a powerful lobby, Thailand should not take this recent threat seriously. It has no basis in U.S. law or political reality. Thailand should conduct its policy review of the compulsory licenses on the merits, without regard to PhRMA's empty bluster.

As a matter of U.S. law, the U.S. Trade Representative (USTR) may designate a country a Priority Foreign Country if it has "the most onerous and egregious acts, policies, and practices which have the greatest adverse impact (actual or potential) on the relevant U.S. products." [2] Since there is little doubt that Thailand's actions are compatible with its obligations under TRIPS, a point that USTR has never disputed, USTR could not make such a designation.

As a matter of normal practice around the Special 301 process, it is important to note that PhRMA routinely asks for more than it has any hope of achieving. In 2006, for example, PhRMA requested that Canada and Germany be designated Priority Foreign Countries, [3] a request USTR of course rejected. So the threat that PhRMA is going to push for Priority Foreign Country status is much less significant than it may seem.

There are other political realities that the Thai government should take into account in assessing the seriousness of PhRMA's threat. The pharmaceutical industry is held in shockingly low regard by the U.S. public. A recent poll found only 11 percent of the U.S. public believes the pharmaceutical industry to be "generally honest and trustworthy." [4]

Additionally, each of the three leading U.S. presidential contenders is much more critical of the industry than the current president. Hillary Clinton has emphasized her support for the Doha Declaration on the TRIPS Agreement and Public Health and has pledged to "support trade policies that protect and expand poor countries' right to affordable, quality-assured generic drugs for important health needs." [5] Barack Obama likewise has emphasized that he "supports the rights of sovereign nations to access quality-assured, low-cost generic medication to meet their pressing public health needs." [6] John McCain has not issued a policy statement on these matters, but he has been very critical of the brand-name pharmaceutical industry, recently characterizing the companies as "the big bad guys." [7]

Thus, regardless of who is the next U.S. president, it is certain that the next U.S. administration will be much less responsive to pharmaceutical industry interests than the current administration; and it is likely the case that the next administration will affirmatively support efforts in developing countries to speed the introduction of generic competition to make essential medicines available. U.S. policy changes are already underway; the New Trade Policy, worked out between the Congress and the Bush administration provides much more latitude to U.S. trading partners on access to medicines-related policies than has previously been the case. [8]

The world has looked to Thailand as a leader in ensuring that essential medicines are made available to people who need them. The compulsory licenses issued over the past year have shown that developing countries have lawful policy tools available at their disposal to overcome patent barriers to making life-saving medicines accessible. We hope that the government maintains this policy. But whatever it does should be decided on the merits, not influenced by the reprehensible but groundless threats from PhRMA.

Sincerely,

Essential Action, Washington, DC

ACT UP New York, New York, NY

ACT UP Philadelphia, Philadelphia, PA

Africa Action, Washington, DC

African Services Committee, New York, NY

AIDS Treatment News, Philadelphia, PA

American Jewish World Service

American Medical Student Association (AMSA)

CPATH (Center for Policy Analysis on Trade and Health), San Francisco, CA

Global AIDS Alliance, Washington, DC

Global Justice, Columbia University Chapter, New York, NY

Health GAP (Global Access Project)

Housing Works, New York, NY

Initiative for Medicines, Access & Knowledge (I-MAK), New York, NY

Knowledge Ecology International (KEI), Washington DC

Missionary Oblates of the Mary Immaculate, Justice, Peace/Integrity of Creation Office,
Washington, DC

National Association of People with AIDS (NAPWA), Silver Spring, MD

Oxfam America

Progressive Intellectual Property Law Association, Cleveland, Ohio.

Salud y Farmacos, Austin, TX

Stop HIV/AIDS in India Initiative (SHAI), Washington, DC

Student Campaign for Child Survival (SCCS)

Student Global AIDS Campaign (SGAC)

Student Trade Justice Campaign (STJC)

Test Positive Aware Network (TPAN), Chicago, Ill

Transafrica Forum, Washington, DC

Treatment Action Group (TAG), New York NY

Universities Allied for Essential Medicines (UAEM)

Vermont Global Health Coalition (VGHC), Burlington, VT

Wilson Resource Center, Arnolds Park, IA

Individual Endorsements

Professor Brook K. Baker, Northeastern University School of Law, Program on Human Rights and the Global Economy, Boston, MA

Chris Curry, MD/PhD Candidate, Loyola University, Chicago, IL

Professor Michael H. Davis, Cleveland State University, College of Law, Cleveland, OH

Professor Sean Flynn, Associate Director, Program on Information Justice and Intellectual Property, American University, Washington College of Law, Washington, DC

William (Bill) Haddad, Chairman/CEO, Biogeneric Partners, Inc.

Professor Nuria Homedes, University of Texas School of Public Health, Austin TX

Tom McCaney, Associate Director, Corporate Social Responsibility, Sisters of St. Francis of Philadelphia, Philadelphia, PA

Mike Palmedo, Research Coordinator, Program on Information Justice and Intellectual Property, American University, Washington College of Law, Washington, DC

Anthony Robbins and Phyllis Freeman, Co-Editors. Journal of Public Health Policy, Boston, MA

Eric Sawyer, Co-founder of ACT UP New York, Health GAP and Housing Works, New York, NY.

Professor Susan Sell, Director, Institute for Global and International Studies, George Washington University, Washington, DC

Anuja Singh, Research Associate, Poverty Action Lab, Columbia University, New York, NY

Professor Patricia Siplon, Department of Political Science, St. Michael's College, Burlington, Vermont

Dr. Anthony So, Director of the Program on Global Health and Technology Access, Terry Sanford Institute of Public Policy, Duke University, Durham, NC

Meredy Throop, Global Campaigns Associate, RESULTS Educational Fund,
Washington, DC

Professor Rudolf V. Van Puymbroeck, Senior Scholar, O'Neill Institute for National and
Global Health Law, Adj Associate Professor, School of Nursing & Health Studies,
Georgetown University, Washington, DC

cc: Mr. Samak Sundaravej, Prime Minister of the Kingdom of Thailand
Mr. Krit Garnjana-Goonchorn, Ambassador of the Kingdom of Thailand to the
United States of America

[1] Phusadee Arunmas, "Thailand Could Face Sanctions After Lobbying by Drug Firms,"
Bangkok Post, January 31, 2008.

[2] 19 USC 2242 (b).

[3] PhRMA 2006 Special 301 Submission, available at:
<http://international.phrma.org/archives/phrma_2006_special_301_submission>.

[4] The Harris Poll #107, November 1, 2007, "Oil, Pharmaceutical, Health Insurance,
Managed Care, Utilities and Tobacco Top the List of Industries That Many People Think
Need More Regulation," available at:
<http://www.harrisinteractive.com/harris_poll/index.asp?PID=825>.

[5] "Clinton Announces Plan to Fight HIV/AIDS At Home And Abroad," November 27,
2007, available at <<http://www.hillaryclinton.com/news/release/view/?id=4392>>.

[6] "Barack Obama: Fighting HIV/AIDS Worldwide," available at:
<<http://www.barackobama.com/pdf/AIDSfactsheet.pdf>>.

[7] John Distaso, "Romney, McCain Clash on Illegal Immigration," Manchester Union-
Leader, January 6, 2008, available at: <
<http://www.unionleader.com/article.aspx?headline=Romney%2C+McCain+clash+on+illegal+immigration&articleId=0691e300-20ec-495c-8cbf-f692481f81de>>.

[8] Congress and Administration Announce New Trade Policy, U.S. House of
Representatives Way & Means Committee (news release), May 11, 2007, available at:
<<http://waysandmeans.house.gov/news.asp>>.