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PHILIPPINES: IP MONOPOLY ISSUES IN THE POST COVID-19 ERA & COMPULSORY LICENSING IP COLLEGIUM ANNUAL ONLINE MEETING (March 10, 2022)

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March 10, 2022

TOPICS FOR DISCUSSION

- **TRIPS Waiver**
- **The PHILIPPINES' Stand**
- **Compulsory licensing in the Philippines**
- **Covid-19 Situation in the Philippines**
- **Philippines Innovations/Inventions Related to Covid-19**
- **Conclusion**

PROPOSED TRIPS WAIVER

- **Obligations under TRIPS waivable under “exceptional circumstances”;**
- **South Africa & India’s joint submission for temporary waiver – Oct. 2020;**
- **Revised text of waiver: applicable only to “health products and technologies” for Covid-19 prevention, treatment and containment which would include vaccines, therapeutics, diagnostics, medical devices, and personal protective equipment.**

PROPOSED TRIPS WAIVER

- **Proposed minimum duration of the waiver – 3 years;**
- **Subject to annual review;**
- **Once the "exceptional circumstances" rationalizing the waiver cease to exist, the WTO will be required to determine a date to terminate the waiver.**

PROPOSED TRIPS WAIVER

- **Pro Waiver:**

- (i) IP rights are barriers to needed increase in vaccine production;
- (ii) Innovation on Covid-19 relief driven by government funding and support, instead of IP rights.

- **Against Waiver:**

- (i) IP is incentive to innovation;
- (ii) No evidence that IP rights prevent access to Covid 19 medications and technologies;
- (iii) There are other factors affecting the manufacture and distribution of vaccines.

PROPOSED TRIPS WAIVER

- **Waiver still under discussion;**
- **EU counter-proposal seeks to simplify process of obtaining compulsory license, e.g., waiving consent of patent owner, declaring the pandemic as national emergency, lower the level of compensation of the patent owner;**
- **WTO continues small group consultations and informal meetings, and news is that it will reconvene on March 9-10, 2022.**

PHILIPPINES STAND ON TRIPS WAIVER

- No clear official stand yet;
- Organizations and individuals supporting the Waiver:
 - (i) Coalition for People's Right To Health (CPRH) – putting people over profits and patents, equity of access is a right to health; limitations muddle the argument for compulsory licensing;
 - (ii) The University of the Philippines supports the suspension of the IP rules on the vaccines since the Philippines need a rapid immunization nationwide;

PHILIPPINES STAND ON TRIPS WAIVER

- **Some senators in the Philippines Senate have initiated proposals to support the TRIPS waiver. They believe that the waiver would help ramp up the global production of the vaccines without permission from the patent holders;**
- **In the House of Representatives, the Makabayan bloc has filed a House Resolution urging the government to support the waiver;**
- **The Health Alliance for Democracy supports the waiver and proposes that the country start developing its own drug industry to be not dependent on foreign industries;**

PHILIPPINES' STAND ON TRIPS WAIVER

- **The IPOPHL's comment on the first draft of the waiver is that the provisions are broad, vague and unclear, which could result in unpredictable and unstable IP system, but will submit to the decision of the inter-agency committee of WTO matters;**
- **The Department of Foreign Affairs supports the waiver;**
- **The Department of Health (DOH) is carefully considering.**

RA 8293 – GROUNDS FOR COMPULSORY LICENSING

- **TRIPS Agreement provides for compulsory licensing;**
- **National emergency or circumstances of extreme urgency;**
- **Public interest – national security, nutrition, health or the development of other vital sectors of the economy as determined by the appropriate government agency;**
- **Manner of exploitation by patent owner is anti-competitive as determined by judicial or administrative body;**

RA 8293 – GROUNDS FOR COMPULSORY LICENSING

- **Public non-commercial use without satisfactory reason;**
- **Patented invention not being worked on in the Philippines on a commercial scale, although capable of being worked on, without satisfactory reason. Importation of the patented article constitutes working or using the patents;**
- **Demand for patented drug not being worked on to an adequate extent and on reasonable terms as determined by the DOH Secretary.**

RA 8293 – SPECIAL COMPULSORY LICENSE UNDER THE TRIPS AGREEMENT (Sec. 93-A)

Importation of Patented Drugs & Medicines (93.A.1)

- The Director General of the IPOPHL upon the written recommendation of the DOH Secretary, shall upon filing of a petition, grant a special compulsory license for the importation of patented drugs and medicines;
- Additional special alternative procedure to ensure access to quality affordable medicines and shall be primarily for domestic consumption;
- Adequate remuneration be paid to the patent owner;
- Reasonable measures to be exercised by the grantee to prevent re-exportation of the imported products;
- License immediately executory;
- Only the Supreme Court can issue TRO or preliminary injunction or other provisional remedies that will prevent the grant of the license.

RA 8293 – COMPULSORY LICENSING

Period for Filing a Petition for Compulsory License

- Patent not being worked on a commercial scale in the Philippines: 4 years from date of filing, or 3 years from grant, whichever period expires last.
- All other grounds: may be applied for any time after the grant of the patent.

COMPULSORY LICENSING

No application for compulsory licensing of a patent involving Covid-19 had been filed before the IPOPHL.

COMPULSORY LICENSING - CASE

Smith Kline & French Laboratories vs. CA, BPTTT, Doctors Pharmaceuticals (GR No. 121867, July 24, 1997)

- **Compulsory licensing of Cimetidine – request for Authorization to manufacture its own brand from the drug Cimetidine;**
- **Patent owner Smith Kline opposed stating that Respondent had no capability to manufacture the product, and that it was capable of supplying the market;**
- **Decision to issue license to respondent was made: (i) Respondent had capability to work on the patent, (ii) applicant was able to show that Cimetidine was necessary for the manufacture of anti-ulcer drug, needed to promote public health.**

COVID 19 INNOVATIONS IN THE PHILIPPINES

GenAmplify Corona Virus (Covid-19) rTR-PCR Detection Kit:



Photo from: <https://www.ipophil.gov.ph/news/ph-universities-and-colleges-in-action-to-combat-covid-19/>

COVID 19 INNOVATIONS IN THE PHILIPPINES

Powered Air Purifying Respirator (PAPR)



Photo from: <https://www.ipophil.gov.ph/news/ph-universities-and-colleges-in-action-to-combat-covid-19/>

COVID 19 INNOVATIONS IN THE PHILIPPINES

Bot Ensuring Safety and Health in Isolated Environment.



Photo from: <https://www.ipophil.gov.ph/news/ph-universities-and-colleges-in-action-to-combat-covid-19/>

COVID 19 INNOVATIONS IN THE PHILIPPINES

Sanipod Disinfection Cubicle.



Photo from: <https://www.ipophil.gov.ph/news/ph-universities-and-colleges-in-action-to-combat-covid-19/>

COVID 19 INNOVATIONS IN THE PHILIPPINES

Clean Intubate.



Photo from: <https://www.ipophil.gov.ph/news/ph-universities-and-colleges-in-action-to-combat-covid-19/>

COVID 19 INNOVATIONS IN THE PHILIPPINES

Reusable Face Mask.



Photo from: <https://www.ipophil.gov.ph/news/ph-universities-and-colleges-in-action-to-combat-covid-19/>

INVENTIONS/INNOVATIONS DEVELOPED BY UNIVERSITIES

Other Innovations Developed by Universities and Colleges.

- Batangas State University – 4 3D printing machines which can produce 48 face shields a day
- Bicol University – Faculty and students with a local company worked on a design for face masks, and so far has distributed 200 pieces to barangay frontliners
- Capiz State University – produced and distributed about 3,000 face shields to hospital frontliners
- Cebu Technological University with 20 faculty and staff has produced and distributed 400 face shields in 21 hours
- De La Salle University produced and distributed about 1, 411 per week of face shields to different hospitals all over the country
- Iloilo Science and Technology University has produced and distributed 1,000 face masks to frontliners in various hospitals

INVENTIONS/INNOVATIONS DEVELOPED BY UNIVERSITIES

Other Innovations Developed by Universities and Colleges.

- Mindanao State University and Iligan Institute of Technology produced 3D printer face shields and distributed them to bread producers
- Negros Oriental State University produces 350 per day do it yourself face shields and distributed them to various community hospitals and health centers

IPOPHL – launched a site – *Patent Information Reports related to Covid-19 available for use by anyone, free of charge.*

PRES. RODRIGO DUTERTE – offering PHP50Million reward to any Filipino who can produce a vaccine against Covid-19.

COVID SITUATION IN THE PHILIPPINES

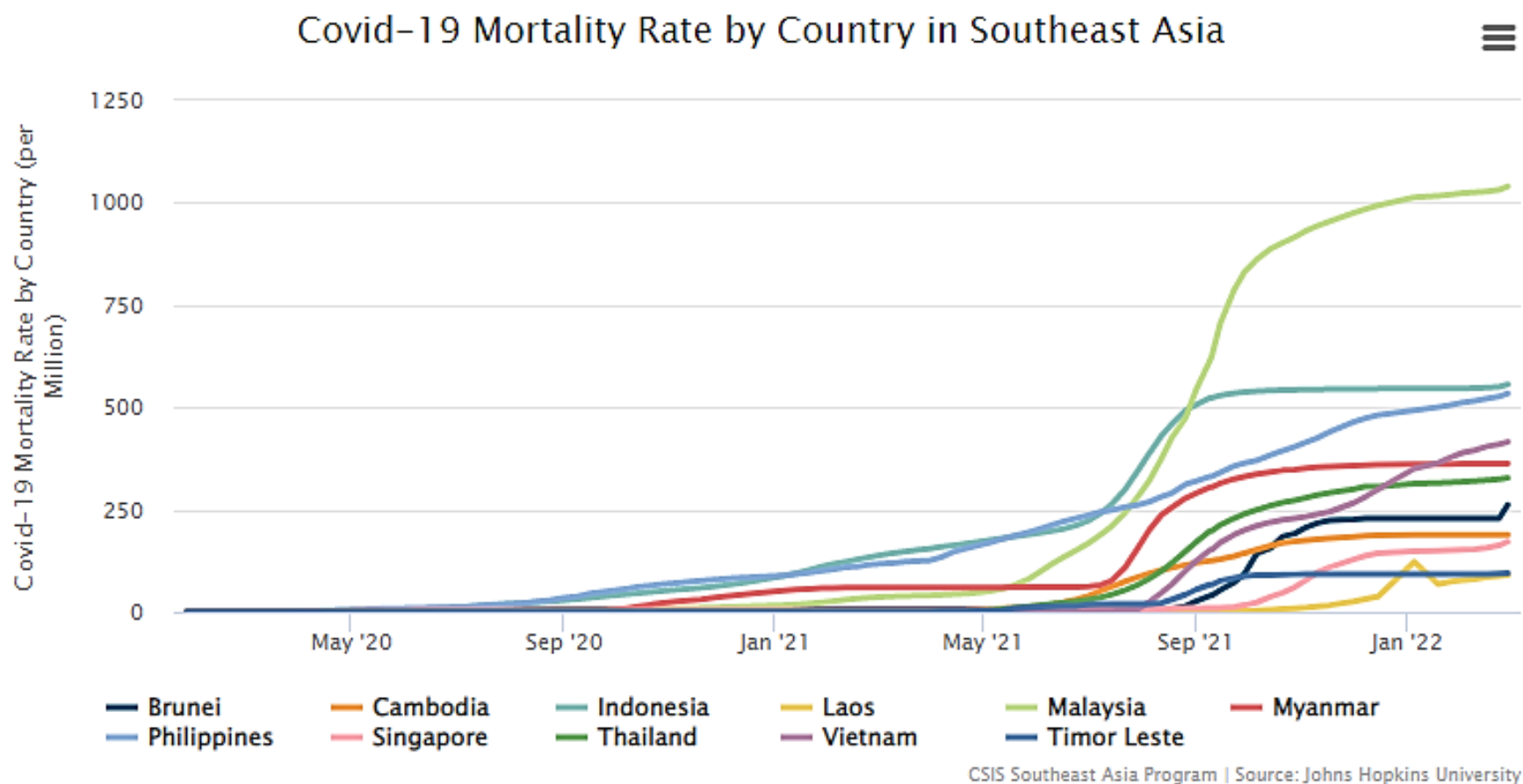
- For 2 months in 2020, the Philippines had the most number of Covid-19 cases in Southeast Asia when it overtook Indonesia from August 6 to October 15.
- At around October, 2021, the Philippines ranked 20 worldwide and 3rd among the ASEAN countries.

COVID SITUATION IN THE PHILIPPINES

Country	Cases	Cases Last 24hr	Deaths	Total Fully Vaccinated	Percent Fully Vaccinated	Cases per Million
+ World	432,127,008	1,619,729	5,932,306	4,373,402,508	56.1%	55,401
+ China	147,576	6,556	5,133	1,234,540,000	85.8%	103
+ USA	78,809,456	65,138	945,242	214,746,544	64.9%	238,093
+ Indonesia	5,457,775	49,447	147,586	143,778,623	53.6%	20,365
+ Philippines	3,658,892	1,550	56,224	63,091,847	60.1%	34,880
+ Vietnam	3,120,301	78,795	39,962	76,783,305	80.4%	32,660
+ Thailand	2,819,282	24,932	22,809	49,646,601	71.5%	40,624
+ Myanmar	581,837	3,391	19,356	20,919,933	39.2%	10,902
+ Malaysia	3,367,871	62,714	32,591	25,749,085	82.5%	107,945
+ Cambodia	129,078	479	3,027	13,841,557	86.5%	8,062
+ Laos	142,237	304	619	4,294,399	58.3%	19,313
+ Singapore	679,795	18,597	986	4,898,322	87.3%	121,132
+ Timor Leste	22,584	0	126	571,418	42.6%	16,855
+ Brunei	51,516	3,461	115	404,301	94.3%	120,194

From: <https://www.csis.org/programs/southeast-asia-program/projects/past-projects/southeast-asia-covid-19-tracker>

COVID SITUATION IN THE PHILIPPINES



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COVID SITUATION IN THE PHILIPPINES

- Because of the decreasing trend on Covid infection and death, starting March 1, 2022, the National Capital Region which includes Metro Manila has been placed on Alert 1 level, the lowest among the levels, which allow the following:

- (i) no restrictions in terms of indoor and outdoor capacities;
- (ii) everyone can undertake intrazonal and interzonal travel without regard to age or comorbidities;
- (iii) all persons, establishments or activities are likewise allowed to operate, work, or be undertaken total onsite
- (iv) all private offices, government offices may operate at full 100%

Some protocols to be observed on Alert Level 1:

- (i) well-fitted face masks to be worn properly at all times;
- (ii) individuals 18 years old and above will be required to present proof of full vaccination before participating in mass gatherings or entry into indoor establishments.

CONCLUSION

- **The Philippines has no official position yet on the waiver;**
- **The waiver will require amendment of the IP Code which would take some time;**
- **While there is no certainty that no surges or new variants of the Covid-19 will evolve, at the present time, there seems to be no urgency for the Philippines to support the waiver;**
- **The counter-proposal of the EU on simplifying the compulsory licensing process appears to be worth exploring.**

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THANK YOU FOR LISTENING!

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