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ANALYSIS-Thailand's drug patent moves could spread

By Kim Dixon
REUTERS
Updated: 11:43 a.m. ET May 1, 2007

CHICAGO - Bold drug-patent challenges by Thailand could lead other emerging-market governments to follow suit, putting pressure on big pharmaceutical companies that are looking to these developing countries for growth.

Thailand stunned drug makers in January when it issued licenses for cheap generic versions of Abbott Laboratories Inc.'s Kaletra for HIV and of Sanofi-Aventis and Bristol-Myers Squibb's Plavix anti-clotting medicine.

The moves by Thailand, which is invoking trade laws for public health needs and sidestepping patents, could set off a chain reaction in emerging markets, experts said.

"If one country makes a decision, it can embolden others," said Lawrence Kogan, chief executive of the Institute for Trade, Standard and Sustainable Development, a free market group.

Already Brazil is mulling a similar step with Merck & Co.'s Efavirenz AIDS drug.

Research firm IMS Health said it expected pharmaceutical sales in emerging markets to rise to 17.4 percent of a total $687 billion market this year, up from 13 percent in 2000.

Emerging markets generate no more than 8 percent of sales by major pharmaceutical companies, but are growing more rapidly than the United States and Europe, according to Gustav Ando, a health-care analyst at Global Insight, which advises investors and companies.

"If Thailand sets a precedent and says we don't have to uphold patents, it will probably start in Asia in the Philippines and Malaysia, and then spread to Latin America," he said.

BEYOND AIDS

On Monday, the U.S. Trade Representative criticized Thailand for the steps it had taken to override drug patents, calling it an issue of "serious concern." Thailand's addition to the United States' so-called priority watch list could be a first step toward sanctions.

Free-market advocates had lobbied the USTR to put Thailand on the list, which includes China.

Thailand's use of patent laws could spread, "where there is political ownership of the issue," said Rohit Malpani, trade policy adviser for Oxfam International. Such areas could include Kenya, South Africa or even India.

Encouraged by the World Health Organization and other aid groups, developing countries have seen the link between disease and poverty, and are spending more of their income on health care, he said.

"They are increasingly trying to expand access to more people," Malpani said.

The license Thailand issued for Plavix is especially groundbreaking because these disputes have centered in the past on drugs for AIDS, a more publicized but less prevalent killer than heart disease.

Heart disease kills about 17.5 million people a year, according to the World Heart Federation. In 2005, AIDS killed 2.8 million people, the United Nations said.

"Heart disease is the leading cause of death in the world, and that includes developing countries," said Jamie Love, director of the advocacy group Consumer Project on Technology. "They have pretty much the same problems as developed countries."

POLITICAL POSTURING?

Under World Trade Organization laws, poor nations can issue compulsory licenses to protect public health and access to medicines. In cases of "national emergency," countries can license production or sale without the permission of the patent holder.

The Washington College of Law at American University issued a report last week concluding Thailand's actions complied with patent law.

"Arguments to the contrary ... should be dismissed as political posturing," according to Sean Flynn of the law school's justice and intellectual property program.

The pharmaceutical industry and its supporters dispute the existence of a national AIDS or heart disease crisis in Thailand.

"In Thailand's case, there wasn't a sudden change in health conditions," said Ronald Cass, a former member of the U.S. International Trade Commission. "You have to negotiate first and make a reasonable offer to cover economic costs."

Thailand accounts for less than 1 percent of drug makers' annual sales, Ando said, but emerging markets are where the growth is as business in Europe and the U.S. slows dramatically.

Allowing generics in Thailand could open a can of worms, according to Chad Bown, an economics professor at Brandeis University and fellow at the Brookings Institution.

"Once a firm produces (a generic) in Thailand, there can be a leakage effect," leading to the cheaper versions becoming available outside that country, he said.

There are also reputations and public opinion to consider.

Bown said: "You don't want to be seen out there in the world picking on poor countries whose populations may be sick or dying."