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ANALYSIS-Thai drug move stirs patent debate

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By Darren Schuettler

BANGKOK, Feb 16 (Reuters) - When Thailand's army-appointed government fired the first salvo in its drug price war with Big Pharma, nobody was more surprised that Douglas Cheung.

"Imagine my shock when I picked up my newspaper and saw they issued a compulsory licence for our drug," Cheung, country representative for pharmaceutical giant Merck <MRK.N>, told Reuters.

Under world trade rules, poor nations can sidestep international patents by issuing a "compulsory license" to buy or make copycat versions of a drug in a national emergency, or if talks with the drug maker fail.

The "big stick" was meant only as a final bargaining chip, and in cases such as Brazil, it usually worked.

But in November, Thailand broke that unwritten rule and stunned drug makers when it issued a compulsory licence for Merck's HIV/AIDS drug, Efavirenz, with no prior warning to the company or offer of negotiations.

Earlier this month, it issued unilaterally licences for another HIV/AIDS drug and a heart disease medicine, the first time a developing nation has done so for such a treatment.

Drug makers say Health Minister Mongkol na Songkhla has 11 more drugs for AIDS, cancer and heart disease in his sights unless they dramatically reduce prices.

"We don't call this a threat, but a negotiation for the country's benefit," said Mongkol, who has become a poster boy for health activists and villian to one drug company executive, who described his strategy as "shoot first, then talk".

"PUNCH IN THE NOSE"

A former hotspot for the virus, Thailand has won praise for reducing new infections and expanding drug treatment to 100,000 of 580,000 people living with HIV/AIDS, most receiving a generic first-line drug from the Government Pharmaceutical Organisation.

But doubts about the quality of the GPO drug have persisted and as some patients develop resistance, they need more costly second-line drugs such as Efavirenz.

The licences issued so far are expected to save Thailand up to $24 million a year, but questions have been raised about the government's spending priorities after it approved a 34 percent rise in defence spending last year.

Although Malaysia and Indonesia were the first in Southeast Asia to issue licences for AIDS drugs in 2003, Thailand has gone farther than any country in challenging the patent rights of big drug firms by targeting other medicines.

It's a lead drug makers fear other countries will follow.

"They don't like the precedent being set; that a country can simply declare a compulsory licence and import a generic. It's a slippery slope," said a Western diplomat familiar with the issue.

Drug makers have talked tough in public, accusing the Bangkok government of stealing intellectual property and threatened to withhold new medicines from the Thai market.

But they also appear to be trying to negotiate a way out.

Merck said on Thursday it had nearly halved the price of Efavirenz to 700 baht per patient per month thanks to manufacturing "efficiencies" and a more favourable exchange rate.

Thai officials say they have been in talks with Abbott Laboratories <ABT.N>, makers of Kaletra. The drug firms appear to have little stomach for a court fight since the Thai move is technically legal under World Trade Organisation rules. But that could change if there were commercial motives behind Thailand's decision.

"BRAVE MOVE," ACTIVISTS SAY

Under a 2003 pact aimed at easing access to vital drugs for poor nations, WTO members pledged not to abuse the system and only waive patents to import generic medicines "in good faith", not for commercial gain.

"What Thailand's policy could end up doing in practical effect is simply move profits from the books of foreign pharmaceutical producers onto the books of the GPO," said Ed Kelly, a Bangkok-based intellectual property lawyer who is representing the drug industry.

The Thai move was a "punch in the nose" of drug companies and compounded the insecurity felt by a foreign investment community already reeling from botched capital controls and a tightening of foreign ownership rules, he said.

"What investors need is some idea that when they come into a market like this with world class technology, they won't lose control of it either to pirateers, black market traders or in this case, a government policy to nationalise foreign assets".

With pressure building on Mongkol to reverse a policy that appears to have caught his cabinet colleagues by surprise and heightened fears of a further hit to Thailand's investment reputation, health activists are riding to his defence.

Paul Cawthorne of Medecins Sans Frontieres said Thailand "can lead the way in showing developing countries it is possible to offer their people access to medicines for all.

"If this brave attempt fails, the multinational companies will have a stranglehold on the lives and well-being of millions of poor people, and no other developing country will dare use their right to issue a compulsory licence," Cawthorne wrote in an opinion piece last week.