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*Global Health Security
COVID-19 & Its Impacts*

Vaccine Politics: Compulsory Licensing in SE Asia?

By Hannah Elyse Sworn

SYNOPSIS

Compulsory licensing offers an attractive option for Southeast Asian governments to bypass patent protections and produce desperately needed COVID-19 vaccines for their populations while navigating the geopolitical risks of relying on Chinese vaccine donations.

COMMENTARY

ACCESS TO COVID-19 vaccines has become highly politicised, creating diplomatic spats such as that between the [European Union and Britain](#) and triggering a [wave of export controls](#) on medical products. Developed states have snapped up the lion's share of high-efficacy patented vaccines produced by Pfizer, AstraZeneca and Moderna while their less-developed counterparts struggle to secure sufficient supplies for their populations.

As developing countries lose out in the race to secure COVID-19 vaccinations, conflict over patent protection as a barrier to access to essential medicines has reared its ugly head. What policy options are available for governments in the region to secure sufficient supplies of expensive patented vaccines that have thus far been snapped up by developed states?

Intellectual Property in the COVID-19 Era

As of March 2021, [76% of all vaccine doses](#) had been administered in ten — mostly

high-income — countries where younger, less at-risk populations are being inoculated before vulnerable groups in developing countries. This [vaccination gap](#) increases the risk of extending the pandemic through additional waves, new strains and [global economic fallout](#) originating from countries with low vaccine coverage.

Like many other drugs, COVID-19 vaccines are protected by patents, which — to incentivise innovation — stop an invention from being produced without permission from the patent holder for a certain period of time. However, the enforcement of property rights for essential drugs during global health crises has been a longstanding controversy, from the HIV/AIDS pandemic of the 1980s and 90s to the 2006 swine flu pandemic and now COVID-19.

High IP protections of drugs can prevent the production of cheap but equally effective generic versions and impede access to medications in countries that cannot afford expensive branded drugs. Yet, pharmaceutical companies argue that patents are necessary to encourage invention of life-saving drugs in the first place.

[Moderna](#) has announced that it will not enforce the patent on its vaccine in the short term. However, in the WTO, [developed countries have blocked](#) a request from over 80 developing states for an IP waiver on all COVID-19 vaccines, presumably to protect their economic interests. Similarly, the WHO's COVID-19 technology access pool — which provides countries with access to patent-free drug technology and data — has thus far had [zero contributions](#) from pharmaceutical companies.

The Politics of Southeast Asia's Vaccine Dilemma

In the midst of vaccine protectionism, China has emerged as a champion of global public goods in health, [donating vaccines](#) to 53 developing countries around the world, [including millions to ASEAN](#) members. Beijing is also [partnering with Indonesian drug firm](#) PT Bio Farma, who will manufacture enough Sinovac for 40% of Indonesia's vaccine needs and eventually serve as a [regional vaccine production hub](#).

Yet, there are fears that [over-reliance on Chinese vaccines](#) will increase Beijing's leverage to secure favourable compromises on its regional security interests, such as those in the South China Sea. This concern is amplified by the [declining trust](#) between the region's governments and China, illustrated by the recent increase in Chinese [fishing boats](#) in waters claimed by the Philippines and a [new law](#) that authorises the Chinese Coast Guard to fire on foreign vessels in disputed waters.

Alternative vaccines from the US and its partners may not come fast enough, putting Southeast Asian governments in a difficult position. In March the Quad — a security dialogue platform comprising the United States, Australia, Japan and India — [pledged to supply one billion vaccines](#) to Southeast Asia by the end of 2022. However, these states have a much more immediate need to vaccinate their populations to prevent further fatalities and bolster economic recovery.

Responses to Compulsory Licensing

The 1994 WTO Agreement on Trade-Related Aspects of Intellectual Property Rights

(TRIPS) drew intense criticism for impeding access to medicines by increasing the minimum IP standards for all WTO members.

The ensuing 2001 Doha Declaration and 2003 WTO Ministerial decision gave developing countries the right to use TRIPS ‘flexibilities’ to bypass IP protections for public health and national emergencies. One of these flexibilities is compulsory licensing, which allows a country to produce, export and import a patented drug without permission from the patent holder.

Since the onset of the COVID-19 pandemic, compulsory licensing has [drawn attention as a useful tool](#) for speeding up access to vaccines through more efficient regional production. Although pharmaceutical companies and developed states view compulsory licensing as expropriation, Canada, Chile, Ecuador, France, Germany and Israel have all [taken steps to make compulsory licensing easier](#) since the start of the pandemic, although Israel is the only country to have issued a compulsory licence (for an early and ultimately ineffective virus treatment).

Although compulsory licensing carries the risk of backlash from pharmaceutical companies and its administrative requirements are burdensome, Malaysia, Thailand and Indonesia have [a long history](#) with compulsory licensing. These countries have previously used compulsory licences to produce and import drugs to treat HIV/AIDS, hepatitis, cancer and cardiovascular disease.

Compulsory Licensing in Southeast Asia?

In 2003, Malaysia became the first Asian country to issue compulsory licenses post-TRIPS, paving the way for Thailand and Indonesia to do the same on numerous occasions between 2004 and 2012.

Their experience is valuable given [ASEAN’s commitment](#) to information sharing on using TRIPS flexibilities to facilitate access to essential medications. These three countries in addition to the Philippines and Vietnam also have well-established domestic drugs industries with the [capacity to manufacture pharmaceuticals](#) for domestic consumption and export.

Compulsory licensing could be a useful way for Southeast Asian states to secure vaccine access without the political consequences of reliance on China or the economic and health consequences of waiting for slow vaccine donations from the US and its partners.

Governments can continue using Chinese vaccines in the short term while working towards producing a variety of vaccines under compulsory licenses to reduce their dependence on external parties. Whether they choose to employ this flexibility will ultimately depend on how each perceives the severity of the virus and the risks of relying on the US or China.

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