

Human Security in intellectual Property Rights: A Case Study of Thailand's Patent Policy*

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Abstract

This article aims to show that the one-size-fit-all intellectual property protection reasserts an essential discussion of human security when the strong intellectual property protection under a neoliberal market ideology has had a diverse effect on a global health. A Case of Thailand has shown that its patent policy deprives health security. An establishment of the Department of Intellectual Property, Ministry of Commerce; the three volumes of the Patent Act; and Pharmaceutical Research and Manufacturers Association

* This work was supported by the Higher Education Research Promotion and National Research University Project of Thailand, Office of the Higher Education Commission (HS1069A).

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has dislocated the Thai society and patients from the cessation of R&D projects on medicines as well as the increasing prices of medicines. These dynamics concerns human security and a need to improve health security for individuals' safety and equality in the foreseeable future

บทคัดย่อ

บทความชิ้นนี้ได้ชี้ให้เห็นว่าการคุ้มครองทรัพย์สินทางปัญญาแบบครอบจักรวาลกระตุ้นให้เห็นถึงความจำเป็นในการศึกษาถึงประเด็นความมั่นคงด้านมนุษย์ การคุ้มครองทรัพย์สินทางปัญญาที่เข้มงวดภายใต้อุดมการณ์แบบตลาดเสรีนิยมใหม่ ได้ส่งผลกระทบต่ออย่างรุนแรงต่อระบบสาธารณสุขของโลก กรณีศึกษาที่เกิดขึ้นในประเทศไทยได้ชี้ให้เห็นว่า นโยบายสิทธิบัตรของไทยทำให้ประชากรของประเทศถูกจำกัดสิทธิในเรื่องความมั่นคงของมนุษย์ด้านสาธารณสุข การจัดตั้งกรมทรัพย์สินทางปัญญา กระทรวงพาณิชย์ การออกกฎหมายและการแก้พระราชบัญญัติสิทธิบัตรทั้งสามฉบับ และบทบาทของสมาคมผู้วิจัยและผลิตเภสัชภัณฑ์ ได้สร้างความไม่พอใจให้บังเกิดขึ้นในสังคมไทยและคนไข้จำนวนมากได้รับผลกระทบ องค์การพิพเหล่านี้ได้ส่งผลให้การวิจัยและค้นคว้าทางด้านเภสัชภัณฑ์ของไทยหยุดชะงักลงอย่างสิ้นเชิงพร้อมกันนั้น ก็ได้ส่งผลให้ราคายาเพิ่มสูงขึ้นอย่างมาก ประเด็นเหล่านี้มีความเกี่ยวข้องกับเรื่องความมั่นคงของมนุษย์และจำเป็นต้องปรับปรุงระบบสาธารณสุขให้รองรับกับความปลอดภัยและความเท่าเทียมกันของมนุษย์ในอนาคตอันใกล้

INTRODUCTION

The concept of human security has been widely discussed for a while among those scholars who focus on international relations, international political economy, economics, civil society, or even

military strategy. This phenomenon reflects a paradigm shift from the state-centric notion to the rights of individuals. Rather than narrowly focusing on military, national interests, wealth and power, and nuclear weapons, regarded as the tradition security, human security provides a space for discussing individuals' safety in their economic and societal circumstances of equality and justice.¹ The question of how human security fits into the discussion of intellectual property (IP hereafter) is firmly relevant to an idea of the neoliberal market in which it has an effect on individuals' safety, rights, and equality.

Based on Karl Polanyi's problematique on "the self-regulating market", an emergence of liberal market economy has drastically transformed natural resources to so-called "the fictitious commodities" and integrated social life to be part of a market economy.² In the light of an academic activity, Joseph Stiglitz finds that what Polanyi's concerns about the market and its discontents have been currently re-appearing in the age of Neoliberalism.³ The neoliberal self-regulating market has monopolized knowledge and information in forms of intellectual property rights, in which knowledge and natural resources have been commoditized into the "new fictitious commodities". Such dynamic leads to an emergence of the global intellectual property protection in which each nation is obliged to impose a protection on patent, corporation, and trademark. In this process, the United States, other leading industrial countries, and pharmaceutical corporate have

¹ Donald E. Weatherbee. "Human Security in Southeast Asia International Relations". in *Southeast Asia: the Struggle for Autonomy*. 2010. p. 233.

² See, Karl Polanyi. *The Great Transformation*. 1957.

³ Joseph E. Stiglitz. "Foreword". Karl Polanyi. *The Great Transformation: The Political and Economic Origins of Our Time*. 2001.

jointly pressured countries around the world to develop their domestic patent system in exchange with the US trade preferences.⁴ In a case of Thailand, with a pressure from Department of Intellectual Property, Ministry of Commerce, and Pharmaceutical Research and Manufacturers Association (PReMA), Thailand has been forced to enact the stringent patent acts, particularly the protection of medicine products in 1992, 8 years before a deadline from the World Trade Organization (WTO). Consequently, the IP protection and drug patents led to an absolute cessation of pharmaceutical R&D in Thailand, a collapse of healthcare welfare, and an obstruction of patients to access medicines.

This article intends to argue that *“the one-size-fit-all intellectual property protection reasserts an essential discussion of human security when the strong intellectual property protection under a market ideology has had a diverse effect on a global health. A Case of Thailand will show how its patent policy deprives individuals’ safety, rights, and equality in healthcare”*. In order to support an above argument, this article will be divided into four main parts. The first part aims to briefly review a concept on human security in order to draw readers to a common understanding. The second part proposes a linkage between human security and an issue on intellectual property right. To illustrate more on a vital of this study, the third element deals with a hot debate on global health, in which most scholars agree that the one-size-fit-all intellectual property protection has had an effect on

⁴ Peter Drahos. “Global Property Rights in Information: The Story of TRIPS at the GATT”. *Prometheus*. 13.1(1995): 7-8; and G. Bruce Doern. *Global Change and Intellectual Property Agencies*. 1999. p. 49.

the quality of health globally. The last part proudly presents a case study on Thailand where a patent policy has long been dedicated to the market ideology so that it impedes a way towards human security.

I. GETTING TO KNOW HUMAN SECURITY: A VERY BRIEF INTRODUCTION

Human Security is a new re-fashioning concept in a security issue. It has been widely discussed since the end of the Cold War.⁵ For some international relations scholars, a discussion on human security signals a paradigm shift from a traditional security to a room for individuals' welfare and status.⁶ As having long been witnessed, a discussion on "traditional security", emerging in the Cold War era to explain a state's capacity to cope with external threats, has concerned a topic on nation state, sovereignty, national interest, armament, nuclear weapons, and threats from enemies and invaders.⁷ This is a legacy from an emergence of nation-state in the 17th century where an idea of a traditional security becomes apparent. States solely employ rights and means to protect their citizens. Therefore, the notion of state power and national security are thus established and emphasized to guarantee order and peace especially in a period of the Cold War.⁸

⁵ David Capie and Paul Evans. *The Asia-Pacific Security Lexicon*. 2002. p. 139.

⁶ Donald E. Weatherbee. *loc.cit.*

⁷ David Capie and Paul Evans. *loc.cit.*

⁸ Commission on Human Security. *Human Security Now*. 2003. p.2.

In contrast, with a more complexity of international security in the 21st century, the idea of traditional security fails to cover many new issues; like, HIV, economic gaps, global warming or biological diversity. For those who support an idea of "human security", the traditional security operates on an expense of well-beings of people in seeking security in their daily lives. Rather focusing on a territorial security, a human security arena therefore pays much attention to threat of disease, hunger, poverty, unemployment, crime, social conflict, discrimination, political repression, and environmental hazard.⁹

Regarding a definition of "human security", there are several meanings from many academics. Foreign Affairs and International Trade Canada (DFAIT) defines that "*human security requires a shift in perspective or orientation...taking people as its point of reference, rather than focusing exclusively on...territory or governments*".¹⁰ Similarly, the Commission on Human Security also defines that human security is "*to protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment...to [protect] people from critical (severe) and pervasive (widespread) threats...human security also reinforces human dignity*".¹¹ Despite a number of different definitions, the 1994 United Nations Development Program's Report provides a simplistic but accurate meaning of human security; that is, "*freedom from want and freedom from fear*".¹² Interestingly,

⁹ David Capie and Paul Evans. *loc.cit.*

¹⁰ Department of Foreign Affairs and International Trade. *Human Security: Safety for People in a Changing World*. 1999. p. 1.

¹¹ Commission on Human Security. *op.cit.* p. 4.

¹² UNDP. *Human Development Report 1994*. Web. <http://hdr.undp.org/en/reports/global/hdr1994>. 11 June 2011.

such twined definitions have been supported by many scholars. For instances, Thakur discloses human security into both negative and positive way in sense that people need a freedom from want, hunger, attack, torture, imprisonment without a free and fair trial as well as people need a freedom to enjoy life and fulfill achievement respectively.¹³ In the same way, Takemi, drawing an idea from Lincoln Chen, defines human security in a three-part approach: human survival; human well-beings, and human freedom.¹⁴

The 1994 UNDP Report identifying threats to human security were poverty, disease, employment, displacement, education, environment, gender inequality, and so on.¹⁵ This report is therefore regarded as a concretization of human security in an international arena; in the same time, it pinpoints a good start for other efforts of the United Nations for today's development programs.¹⁶ The most prominent UN's program is publicly known as "the Millennium Development Goals" (MDGs). The MDGs supported by the UNDP pledges to deal with poverty and other goals in 2015. There are eight goals contained in this program; those are: eliminate extreme hunger and poverty; achieve universal primary education; promote gender equality and empower women; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria, and other diseases; ensure environmental sustainability; and develop a global partnership

¹³ David Capie and Paul Evans. *op.cit.* p. 139-140.

¹⁴ *Ibid.* p. 140.

¹⁵ UNDP. *loc.cit.*

¹⁶ Donald E. Weatherbee. *op.cit.* pp. 233-234.

for development.¹⁷ These goals have been urged by UNDP for each nation to integrate them with national development programs. It can be argued that MDGs is the most concrete achievement of human security in circumstances.

In order to shape a common understanding on human security which links to a broad area, David Capie and Paul Evans offer four interesting points as the followings.¹⁸ First of all, although the concept of human security treats human as a main unit of analysis, state remains essential in complementing the survival and dignity of individuals. For instance, the role of government is indispensable in protecting citizen's rights, in providing basic infrastructures, or in preserving environments. Without states, these tasks cannot be achieved.

The second characteristic is that human security covers broad area of issues ranging from unemployment, drugs, crime, pollution, human rights, health, environment, diseases, or even wars and organized violence. All of these issues aim to protect people from a wide range of security threat.

The third important point is that a threat human security concerned is not isolated but affecting people everywhere around the world. To this point, Sadako Ogata sharply argues that "*human security requires including the excluded...at the start of the 21st century, we are at dangerous crossroads...in a world of growing interdependence and transnational issues, reverting to unilateralism*

¹⁷ See also, The United Nations. *Millennium Development Goals*. Web. <http://www.un.org/millenniumgoals/>. 11 June 2011.

¹⁸ David Capie and Paul Evans. *op.cit.* pp. 140-142.

and a narrow interpretation of state security cannot be the answer".¹⁹

The view of human security is thus not a clear-cut territory, but interdependence and shared sovereignty.

Last but not least, human security is one essential element of human development. While human development focuses on people's choices of lives and quality of lives, human security focuses on downside risks, menace survival, the continuation of daily life, and the dignity of human beings. A decent standard of living, a proper healthcare program, an effective educational program, longevity, and opportunities for participation supportably are all interesting issues of both human security and human development. Human security and human development are therefore mutually reinforcing.²⁰

To conclude the first part, human security is relevant to several areas; these are, economics, politics, health, food, education, environment, water, biological diversity, energy, welfare, or even intellectual property.²¹ These issues have an effect on people's daily life, rights, safety, or even equality. Unless a proper public service management, security and safety of people cannot be guaranteed. Among these relevant issues, the protection of intellectual property is currently a hot debate among developed nations, developing nations, and underdeveloped nations since it regards dual issues between global health and development.

¹⁹ Commission on Human Security. *op.cit.* p. 5.

²⁰ *Ibid.* pp. 8-10.

²¹ See also, Patcharawalai Wongboonsin, Amara Pongsapich, Supang Chantavanich, and Chanchutha Sookkhee. Eds., *Promoting Human Security in APEC Countries*. 2006; see also, Hans van Ginkel, Brendan Barrett, Julius Court, and Jerry Velasquez. Eds., *Human Development and the Environment: Challenges for the United Nations in the New Millennium*. 2002.

II. THE LINK BETWEEN HUMAN SECURITY AND INTELLECTUAL PROPERTY RIGHTS: THE MARKET-DRIVEN IDEOLOGY

A discussion on how human security linked with intellectual property regards the questions of: how intellectual property works; and what are mechanisms driving the IP protection forward. These dual critical questions are relevant to an idea of the market ideology in which knowledge and information have been commoditized to serve a market orbit. This part will discuss an idea of the IP protection and its global mechanisms to show that the market-driven ideology influencing the IP system reasserts a vital of human security.

A. The IP Protection: a commodification of knowledge and information

As Polanyi concerns the rise of liberal market economy in the seventeenth century, Stiglitz discovers that Neoliberalism has brought about a reincarnation of the neoliberal market economy.²² This newly emerging market has embraced knowledge and information as one among other market productions known as the “*knowledge-based economy*”.²³ Following Polanyi, a commodification of knowledge and

²² A discussion on Karl Polanyi's. *The Great Transformation*. and its implications on the neoliberal era, see Chakkri Chaipinit, and Christopher May. “The Polanyian Perspective in the Era of Neoliberalism: The Protection of Global Intellectual Property Rights”. *Journal of Population and Social Studies*. 19.1(2010): 99-122.

²³The term “knowledge-based economy” is firstly used by Bob Jessop. See, Bob Jessop. *The Future of the Capitalist State*. 2003. pp. 18-22.

information leads to an emergence of the global intellectual property system where knowledge and information become exchangeable and costly to access.²⁴ This logic presumes the market as the best determining-decisions mechanism suggesting that a price can be put on everything so that it can be traded and subjected to legal contracts even knowledge and information.²⁵ Central to an idea of Neoliberalism, set of ideas like deregulation, privatization, and liberalization have been systematically promoted to serve an expansion of economic globalization.²⁶ The neoliberal notion has been injected through education, media, corporate and financial sectors, and state institutions, with the giant supporters; like, the International Monetary Fund (IMF), the World Bank, and WTO.²⁷ With such global governance, it is meant that an economic structure of countries around the world will be arranged to suit the flows of capitals, investments, and speculations.²⁸

²⁴Peter Drahos and John Braithwaite. *Information Feudalism: Who Owns The Knowledge Economy?*. 2002. p. 5.

²⁵ David Harvey. *A Brief History of Neoliberalism*. 2007. pp. 160-165; Ronaldo Munck. "Globalization and contestation: A Polanyian problematic". in *Globalizations*. 3.2(2006): 178.

²⁶John Williamson terms the neoliberal economic tenets, adopted by the rightists and the neo-conservatives as "Washington Consensus". See, John Williamson. *Latin American Adjustment: How Much Has Happened?*. 1990.

²⁷David Harvey. *op.cit.* p. 3.

²⁸ Bob Jessop. describes the neoliberal market as the vigorous 're-commodification of political, educational, health, welfare, scientific, and other activities organized by businesses oriented to exploiting opportunities for profit without regard to possible extra-economic costs and benefits'. See, Bob Jessop. *The Social Embeddedness of the Economy and Its Implications for Economic Governance*. Web. <http://www.comp.lancaster.ac.uk/sociology/soc016rj.html>. 2 April 2009.

In the realm of intellectual property rights, knowledge and information have become “*the most important factor of production and the key to economic competitiveness*”.²⁹ To illustrate more on the commodification of knowledge and information, Christopher May and Susan Sell provide a very interesting metaphor. They argue that knowledge and information are construed as a scarce resource though they are at first not scarce. In this sense, knowledge, formerly not scarce, becomes a scarce commodity that required money for the use of it. Once knowledge and information are a subject of ownership, the IP protection allows ownerships to reap their benefits legally, instead of opening a common usage in each community.³⁰ With the rise of knowledge-based economy, knowledge and information are thus subjected to the profit-seeking market through the full commodification, namely patent, copyrights, and trademarks.

This picture is greatly different from what had happened for ages. Before the rise of neoliberal market economy, knowledge and information were not a commodity and that they has no price for the use of it. During a primitive society, traditional knowledge and folklore are collective resources that people in the same communities shared,

²⁹ See also, Bob Jessop. “Knowledge as a Fictitious Commodity: Insights and Limits of a Polanyian Analysis”. in A. Bugra and K.Aratan, Eds., *Market Economy as a Political Project: Reading Karl Polanyi for The 21st Century*. 2007.

³⁰ Christopher May and Susan Sell. *Intellectual Property Rights: A Critical History*. 2006. pp. 5-6; see also, Karl Polanyi. *Primitive, Archaic, and Modern Economies: Essays of Karl Polanyi*. 1971. p. 145.

cultivated, and maintained them for a common usage.³¹ However, an integration of the knowledge-based economy into traditional communities has become costly for people and communities to access the suitably intellectual commons. Even traditional knowledge and folklore that have been developed by traditional people and communities, they are also subjected to the full commodification. The most notably example of this case is an Indian turmeric and neem tree where the US researchers and foreign corporations were granted a patent on what Indians considered to be traditional uses.³² Against the notion of human security, the universalization of patent protection has thus led to an obstacle to access medicines since it has transformed biodiversities. Some patented knowledge has belonged to indigenous knowledge in traditional communities from ages to ages instead of newly invented.³³ This has caused some dislocations and social concerns, especially among developing countries, in several ways, such as economic development, public health, and technological transfer.³⁴

³¹ Weerawit Weeraworawit. "International Legal Protection for Genetic Resources, Traditional Knowledge and Folklore: Challenges for the Intellectual Property System". in Christophe Bellmann, Graham Dutfield and Ricardo Melendez-Ortiz. Eds., *Trading in Knowledge: Development Perspectives on TRIPS, Trade and Sustainability*. 2003. p.159; Graham Dutfield. "Introduction". Christophe Bellmann, Graham Dutfield, and Ricardo Melendez-Ortiz, Eds., *Trading in Knowledge: Development Perspectives on TRIPS, Trade and Sustainability*. 2003. p. 12.

³² Christopher May and Susan Sell. *op.cit.* pp. 194-5; See also, Vandana Shiva. *Protect or Plunder?: Understanding Intellectual Property Rights*. 2001.

³³ See also, Suman Sahai. "Indigenous Knowledge and its Protection in India". in Christophe Bellmann, Graham Dutfield, and Ricardo Melendez-Ortiz. Eds., *Trading in Knowledge: Development Perspectives on TRIPS, Trade and Sustainability*. 2003.

³⁴ Christopher May and Susan Sell. *op.cit.* pp. 176; Graham Dutfield. *op.cit.* p. 18.

An adoption of a neoliberal thinking to the IP protection therefore leads to a dominant power of developed nations over underdeveloped nations. The reason of why we have to raise a dichotomy between 'developed' and 'underdeveloped' here is that advanced industrial nations have mostly possessed a portfolio of intellectual property; whereas, underdeveloped nations fail to do so. This occurrence allows them to gain advantages over those countries where the IP portfolio are less. Assuming an inequality in the power relationship on the IP protection, the stronger the protection of intellectual property has been imposed, the more developed nations are able to gain advantages over underdeveloped countries. Peter Drahos and John Braithwaite depict this relation as so-called "the knowledge game" in which players "*would [strategically] produce knowledge that would be developed into products, for which their legal divisions would secure an impregnable patent position*".³⁵ The ownership of the IP portfolio allows developed nations as well as advancing industrial countries a handicap to negotiate with other non-IP portfolio countries.

As we shall see, an importance of the IP protection has forced the US and pharmaceutical corporations to promote an adoption of IP standardization in each country. The US has played a leading role to pursue such policy via a promotion of trade package. Moreover, the US also advances its interests via the global IP institutions in order to enforce the IP protection legally. It is thus interesting to discuss the roles of the World Intellectual Property Organization and the World Trade Organization in the following section.

³⁵ Peter Drahos and John Braithwaite. *op.cit.* p. 52.

B. The IP Mechanisms: the WIPO and WTO twin turbo

In an epic of intellectual property discussion, the roles of the World Intellectual Property Organization (WIPO) as well as the World Trade Organization (WTO) are by no way indispensable. It can be argued that before an appearance of WTO, especially the Trade-Related Aspects of Intellectual Property Rights Agreements (TRIPs), WIPO had taken a monopoly role in an IP regime. The WIPO-WTO twin turbo is therefore worthwhile to clarify and study here.

It is good to begin with the role of WIPO as the first milestone for the protection of IP portfolio. Although WIPO has long been serving as one of the global institutions, it is often been neglected from those who study international relations, or international political economy when comparing it with the World Bank or WTO.³⁶ Tracing back to its origin, WIPO is a combination between the “1883 Paris Convention for the Protection of Industrial Property” which was designed to help people of one country obtain protection in other countries in form of industrial property rights (i.e. patents, trademarks, and industrial designs) and the “1886 Berne Convention for the Protection of Literacy and Artistic Works” which was designed to help member states to obtain rights and payments for the use of their creative works (i.e. novels, short stories, poems, plays, songs, operas, musicals, sonatas, drawings, paintings, sculptures, and architectural works). Not so long after an agreement to sign the “Convention Establishing the World Intellectual

³⁶ Christopher May. *The World Intellectual Property Organization: Resurgence and the Development Agenda*. 2007. p. 1.

Property Organization” on July 14, 1967, WIPO became a specialized agency of the UN on December 17, 1974. This movement signaled an establishment of the IP protection as a global standardization.³⁷

Being the specialized agency of the UN, WIPO has taken a responsibility helping many countries to improve their domestic IP legal framework. As indicated in the first report to the UN in 1975, WIPO showed, UN in 1975, the need to help “developing countries in promoting their industrialization, their commerce, and their cultural, scientific and technological development through the modernization of their industrial property and copyright systems and in meeting some of their needs in scientific documentation and the transfer of technology and technical know-how”.³⁸

Following this report, WIPO has been imposing several technical assistance programs, exchange training programs, funding-supported programs, and even legislative assistance programs for many developing nations.³⁹ As we shall see and discuss in the last part, WIPO has a very close relationship with the Department of Intellectual Property (DIP), the Ministry of Commerce of Thailand. Both organizations speak the same language, share the same thought, and act the same manner, particularly a need to lift up the standardization of IP protection in Thailand.

³⁷ *Ibid.* pp. 15-23; G. Bruce Doern. *op.cit.* p. 22; Daniel Gervais. *The TRIPS Agreement: Drafting History and Analysis.* 2003. pp. 9-10.

³⁸ WIPO. *Report of The World Intellectual Property Organization to the Economic and Social Council of the United Nations at its Fifty-Ninth Session.* 1975. p. 13. cited in Christopher May. *op.cit.* p. 27.

³⁹ Christopher May. *op.cit.* pp. 26-27.

The second leg of twin turbo is WTO, an organization derived from a development of the General Agreement on Tariffs and Trade (GATT) on January 1, 1995. Richard Peet argues that this progressive movement aims to respond the notion of trade liberalization, a free flow of commodities, services, and capitals, a promotion of market competitiveness, and the new emerging issues; like intellectual property rights.⁴⁰ It is sufficient to say that a major backdrop of WIPO is on an absence of formal court to deal with any dispute over IP matters.⁴¹ This condition forces the US and other IP portfolio owners to establish a body that strong enough to cover enforcement, acquisition, and most-favoured nation obligations on the IP protection. Once the formal establishment of WTO achieved, TRIPs became a new tool to promote an IP regime of the twentieth century.⁴²

The TRIPs Agreement has set up a minimum standard for a protection of intellectual property contributions; these are, copyright, trademarks, geographical indications, industrial designs, and layout-designs of integrated circuits.⁴³ An imposition of TRIPs as a new global governance in an IP arena has enabled developing nations to pursue their interests.⁴⁴ The main reason is that all WTO members are obliged to charge criminal procedures and penalties, to imprison, and

⁴⁰ Richard Peet. *Unholy Trinity: the IMF, World Bank, and the World Trade Organization*. 2003. p. 146.

⁴¹ G. Bruce Doern. *op.cit.* p. 25.

⁴² Daniel Gervais. *op.cit.* pp. 10-11; Christopher May. *op.cit.* pp. 25-26.

⁴³ Drahos and Braithwaite. *op.cit.* p. 10.

⁴⁴ Christopher May. *op.cit.* pp. 32-33.

to fine in their domestic legislations for those who violate intellectual property rights.⁴⁵

What impacts most on an issue of human security explicitly appears in an effort of WIPO to reassert its position in the realm of intellectual property in September 2004. WIPO has attempted to borrow an optimistic wording of "Development Agenda" from the Doha round of WTO on a need to advance a stronger IP protection. Many WIPO's members from a developing-nation side have sought to enlarge regulations, enforcing procedures, and punishments by citing the need to provide incentives for inventors and researchers. In other words, without a proper incentive, innovations and R&D cannot be achieved. This dynamic surprised members from a developing-nation side, in which all of them understand that the "Development Agenda" scheme, prompting an idea of MDGs, should benefit them rather than increasing a level of IP protection. As Christopher May puts it, "the underlying logic of the Development Agenda, therefore, is perhaps best understood as an attempt to "mainstream" development of WIPO".⁴⁶

To end up this part, an objective of discussing this content is that when applying the notion of IP protection and its global governance mechanisms on a global health issue, safety, rights, and equality of individuals are in critical. The WIPO-WTO twin turbo grooms pharmaceutical corporations to reap and protect their huge profits.

⁴⁵ Richard Peet. *op.cit.* pp. 155-156.

⁴⁶ Christopher May. *op.cit.* p. 79.

III. HUMAN SECURITY AND GLOBAL HEALTH: EFFECTS ON INDIVIDUALS' SAFETY

The illustration of intellectual property and its market mechanisms allow us to see how the market-driven ideology is working. Following the previous task, this part will show how pharmaceutical corporations advance their profits, what their strategies are, and how about the linkage with human security by examining the global health issue.

In a connection between human security and health issue, it is meant that *"individuals and the population are secured about their health regardless of their social classes and economic status... people must be "secured" in the environment they live in. [And] they must have equitable access to good quality essential care when they get sick or become disabled"*.⁴⁷ As being discussed in the opening of this article, a health security issue has been actively inserted into the 2004 UN reform plan. In a report titled "A More Secure World: Our Shared Responsibility", an established ad hoc committee, the High-level Panel on Threats, Challenges and Change, asserted an importance to put in a health security as one among new threats in the 21st century. The Panel, led by Anand Panyarachun as a chairman, indicates economic and social threats, poverty, infectious disease and

⁴⁷ Chitr Sitthi-Amorn, Yupha Onthuam and Suvajee Good. "Indicators for Redistribution of Economic Benefits towards Health Security". in Patcharawalai Wongboonsin, Amara Pongsapich, Supang Chantavanich and Chanchutha Sookkhee. Eds., *Promoting Human Security in APEC Countries*. 2006. p. 61.

environmental degradation are all new threats that break out with no national boundaries, and must be recognized at a national level, a regional level, through a global level.⁴⁸

Similarly, the Commission on Human Security⁴⁹ highlights an importance of being good health as a vital core in the realm of human security. Good health is essential to human dignity and human security in sense that it is a precondition for social stability. In the final report titled "*Human Security Now*", the Commission implies that "[a] healthy child can learn, grow and develop...an adult cured of tuberculosis can resume work to support the livelihood of her family...saving a child's life can secure the future generations of a family...[in contrast] the absence of good health can result in enormous grief (the loss of a newborn or young child) and can precipitate an economic catastrophe for the family (the sudden death of a working adult)".⁵⁰

Based on an above implication, a promotion of health security must be redistributed on a basis of equity, efficiency, quality, and social accountability regardless of rich or poor, men or women, and have or have-not. Nevertheless, since resources are scarce and finance is limited, the underprivileged or the poor should be a priority

⁴⁸ The United Nations. *A More Secure World: Our Shared Responsibility*. 2004. pp.1-3.

⁴⁹ Commission on Human Security is an initiative of the Government of Japan in an response to the UN Millennium Development Goal. This Committee is co-chaired by Sadago Okata, a former UN High Commissioner on Refugees, and Amartya Sen, a Nobel Laureate and Master of Trinity College, Cambridge University. For more information see, *The Commission on Human Security official website*. March 2002. Web. <http://www.humansecurity-chs.org/index.html>. 18 June 2011.

⁵⁰ Commission on Human Security. *op.cit.* p. 96.

group that states aim to provide health security. In the light of a relationship between economic globalization and health security, the fundamental of "equity" means that the rich and the poor have an equal access on health in terms of quality, rather than quantity. Nowadays, compared to those of the poor, the privileged or the rich can easily access to medical care since they possess capabilities to reach private medical services, patented medicines, or high-class insurances.⁵¹ The public health care system should therefore focus on the poor to guarantee their rights to health and to protect them from a fierce economic competition.

However, what has exactly happened in a current time is that these social surveillances have been affected by the market idea. The globalization has enabled an idea of profit-making ideology in sense that the protection of intellectual property has been globally promoted. It can be argued that a promotion of economic growth as mandated in the age of globalization has abandoned a proper distribution on optimal choices on societies. An emphasis on growth, innovation, and patent has widened the gap between the rich and the poor, as well as among industrialized nations, developing nations, and under-developed nations.⁵² In other words, as being discussed previously, the logic of IP protection is optimistic in providing incentives for researchers or inventors. In the other side, once applying such notion onto medicines the IP protection has inevitably led to an impediment of access on drugs. This is meant that only a handful of rich people can

⁵¹ Chitr Sitthi-Amorn, Yupha Onthuam and Suvajee Good. *op.cit.* pp. 62-63.

⁵² *Ibid.* p.61.

access to effective medicines, or patented drugs; whereas, a huge number of poor people are left behind since their economic status do not allow them to access expensive medicines.

To illustrate more on such phenomenon, a discussion on roles of pharmaceutical corporation is essential here. Among businesses and interested groups in the US, pharmaceutical corporation have seized the most powerful action in pushing the protection of IP portfolio. This is because their profits will be properly advanced only if nations around the world overwhelmingly accept a status of patent. In order to achieve their purposes, the gigantic pharmaceutical companies; like, Abbott (US), Bayer Healthcare Pharmaceuticals (US), Bristol-Myers Squibb Company (US), GlaxoSmithKline (UK), Johnson and Johnson (US), Merck & Co., Inc. (US), Novartis Corporation Pharmaceuticals (US), Pfizer, Inc. (US), Sanofi-Aventis (US), etc, have been employing the lobbying measures to influence the US trade policy. In the light of inserting the IP standardization, the owners of patented medicines need a guarantee that their brand name medicines will be properly protected in each country. Regardless of which nationalities their companies are, drug companies in the US, Japan, or European countries, have tried hard to pressure several nations to strengthen the patent regime.⁵³

⁵³ Susan Sell. "Multinational Corporation as Agents of Change: The Globalisation of Intellectual Property Rights". Claire Cutler, Virginia Haufler, and Tony Porter. Eds., *Private Authority and International Affairs*. 1999. p. 172

As being an exclusive club of pharmaceutical companies, “Pharmaceutical Research and Manufacturers of America” (PhRMA) has had a core responsibility in providing many developing nations technical assistances, legal advisories, experts and advocacy skills via the United States Trade Representative (USTR), and the Advisory Committee on Trade Negotiations (ACTN). Both of them have responsible for an international trade of the US administration. While USTR represents an American national interest and negotiates with trading parties on the table, ACTN plays as a think tank for Washington regarding trade issues and acts as an agent linking between businessmen and the US administration. The complex relationship of PhRMA-USTR-ACTN has enabled an interest of drug companies be responded with a supporter of ACTN and USTR’s trade policy. During the Uruguay Round of the WTO meeting, it is obvious that ACTN played as the key agent of the big businesses in influencing the US stance on intellectual property. This pressure was later developed to the US strategy on Trade-Related Aspects of Intellectual Property Rights (TRIPs) policy.⁵⁴

Because of this, USTR has always inserted the protection of patent as an irreversible condition on the trade-negotiating tables. If necessary, the US government has a legitimacy to impose trade sanctions on any trade-party countries that fail to enact and enforce higher standards of intellectual property protection.⁵⁵ These measures have been appeared in series of the US Trade Acts; such as, “the US

Tariff Act of 1930", "*the Trade Act of 1974*", "*the Trade and Tariff Act of 1984*", "*the Omnibus Trade and Competitiveness Act*", which provides the well-known "*301 process*", or "*the Trade Promotion Authority 2002*".⁵⁶ These acts legally allow the US government to counter with any countries violating intellectual property rights, or even failing to protect IP portfolios. To elaborate more on this topic, the US administration, with pressure from the global pharmaceutical corporation, has inserted the minimum standard of the IP protection into the world trade regime both a multilateral regime and a bilateral level.

In the realm of international trading parties with the US, it is apparent that the more developing countries sign the US bilateral free trade agreements, the less they have collective bargaining power to negotiate with Washington. A case of protestation and the strong bargaining power of developing countries led by India and Brazil in the Cancun Meeting exemplifies well of how benefits to the collective bargaining actions against the one-size-fit-all IP protection.⁵⁷ Buntoon Setsiroj, an outstanding member of the FTA Watch Coalition, argues that the US bilateral free trade agreements can be best regarded as a 'divide-and-conquer' strategy. After an upset result in Mexico, the bilateral trading regime has instead enabled the US administration to achieve the IP protection in each country.⁵⁸ In the similar way, Jakkrit Kuanpoth, another famous academic on intellectual property rights,

⁵⁶ Ann Capling. "Trading Ideas: The Politics of Intellectual Property". in Brian Hocking and Steven McGuire. Eds., *Trade Politics*. 2004. p. 183.

⁵⁷ Sangeeta Shashikant. "The Politics of the US' Free Trade Agreements". in *Third World Resurgence*. 167/168(2004): 14.

⁵⁸ Buntoon Setsiroj. "Effects of the Liberalization of Trade and Services". in *FTA and Public Policy: Traps or Opportunities on Trade of Thailand*. (2005) : 81.

labels the US strategy as a 'harmonisation' process by which developing countries were being persuaded to sign bilateral agreements with the United States in exchange with exporting preferences. This is to globally harmonize each country's legal IP frameworks under the US regulation.⁵⁹ Such harmonization will gradually transform the legal structure in each country to go in line with the world patent system which facilitates interests of leading industrial countries.⁶⁰

In the name of 'public goods' for all, G. Bruce Doern argues that these pharmaceutical firms have strongly supported the US trade-related intellectual property rights policy. They have influenced many nations' intellectual property offices, agencies, and even some leaders to agree with an importance of intellectual property rights and adopt the patent protection.⁶¹ The main reasons these corporation have raised to justify their actions are those of incentives for innovations and R&D costs. Since the beginning of the 1980s, the US government has proposed that new inventories should be regarded as public goods and free riders should be prohibited for the use of personal profit-making intention. Without the patent regime, a technological development and innovation cannot be fostered. since it provides incentives for scientists, researchers, or inventors. In case of medicines and pharmaceutical products, the gigantic drug companies

⁵⁹ Jakkrit Kuanpoth. "Current Development and Trends in Intellectual Property Rights: Harmonisation through Free Trade Agreements". in FTA Watch Coalition. *Free Trade Agreements: Impact in Thailand*. 2005. p. 41.

⁶⁰ Ann Capling. *op.cit.* p. 179.

⁶¹ G. Bruce Doern. *op.cit.* pp. 49-50.

have been citing that they receive no sensible incentive to create and invent new effective medicines. This is because their products have been easily imitated though most of their products are patented. Then, it is not possible for them to cover a number of R&D costs.⁶² For those who advocate themselves to the neoliberal globalization, the patent protection and the affluence of innovations and economic growth are firmly interconnected. One of the famous neoliberal proponents, Martin Wolf provides an interesting contention that a proper protection of intellectual property rights would facilitate innovations and boost the economic growth.⁶³ In the same way, Jagdish Bhagwati argues that an attempt of pharmaceutical firms to promote the IP protection paves the way towards effective medicines. Without the IP regime, drug companies cannot conduct any R&D, so that drug inventions have been impeded. Then, either developing countries or developed countries have no ability to access drugs or prepare for their own people.⁶⁴

However, it has been disclosed that the biggest proportion of expenditure spent for each medicine is not mainly on R&D costs, but, annually, on advertising strategies and lobbying measures. Based on an in-depth research and an empirical study by Marcia Angell, there is in fact no correlation between selling prices of medicines and the level of R&D. Regardless of R&D costs, drug companies have tended to

⁶² Ann Capling. *op.cit.* p. 180.

⁶³ Martin Wolf. *Why Globalization Works*. 2005. pp. 50-51.

⁶⁴ Jagdish Bhagwati. *In Defense of Globalization*. 2007. pp. 182-185.

impose high prices on medicines. As we have seen, the leading pharmaceutical corporation have always claimed that they have spent around USD 31,000 million annually. Without a reasonably high price to cover this spending, they cannot manufacture effective medicines for people. Nonetheless, according to an empirical statistic, it is a discoverable data showing that the R&D costs have shared only 14% of all total expenditures each year. Instead, the marketing cost is as high as 31% of the total expenditures costing around USD 67,000 million in each year.⁶⁵

The second main expenditure comes from the cost of lobbying measures. Together with an expenditure on advertising and marketing, these pharmaceutical corporation have annually spent millions of dollars on hiring lobbyists in order to influence the US trade policies, and domestic trade laws inserting the IP implications. Among these big corporation, pharmaceutical corporation possess the most powerful lobbyists of all.⁶⁶ For example, Henry Mckinnell, the former CEO of Pfizer Inc and the former chairman of PhRMA, said that his company has spent more than USD 34 million per year to support the Bush Administration. Because of this, Pfizer won the seat in the USTR Industry Functional Advisory Committee on Intellectual Property (IFAC-3) and succeeded in advancing its benefits on TRIPs-plus.⁶⁷

⁶⁵ See also, Marcia Angell. *The Truth About the Drug Companies: How They Deceive Us And What To Do About It*. 2005.

⁶⁶ Ann Capling. *op.cit.* p. 181.

⁶⁷ Sangeeta Shashikant. *op.cit.* p. 15.

Because of the one-size-fit-all IP protection, it paves the way for some corporation to monopolize the use of such knowledge with high cost instead of fostering innovations and technological transfer.⁶⁸ Since these pharmaceutical companies have harshly pushed forward the universalisation of IP protection, it brings about a huge number of death tolls on HIV. To finish this part, a concrete example on human security and global health is needed here. A case study of Thailand is an interesting where its patent policy, legal IP structures, and patent laws have entirely offered opportunities for the US and pharmaceutical corporation to pursue their profit-seeking implementations.

IV. THAILAND'S PATENT POLICY: TOWARDS HUMAN SECURITY?

Thailand is one among several countries in which millions of patients have been suffering with cancers and HIV. Based on the figures from UNDP, it is apparent that cancers and HIV are the first two causes of death tolls in Thailand. In each year, approximately 66,956 of Thai population died from cancers; while, 53,375 of Thai population died from HIV. Following cancers and HIV, strokes and heart diseases are also ranked among the first five causes of death in Thailand where, in total, nearly 65,000 people in Thailand died (see table 1 below).

⁶⁸ Marcus Taylor. "Rethinking the Global Production of Uneven Development". *Globalizations*. 4.4(2007): 531-532.

Table 1: Causes and Numbers of Death Tolls in Thailand⁶⁹

Causes of Death	Number of DeathTolls (ages 15-44 years old)	Number of DeathTolls (all ages)
HIV / AIDS	41,443	53,375
Traffic Accidents	16,381	24,415
Cancers	9,905	66,956
Strokes	2,607	44,078
Heart Diseases	2,106	20,080

According to the above figures, it becomes clear that Thai patients are ones among others who have been most affected in case that prices on medicines are too high to access. This part will illustrate how Thailand has been affected from the market orbit or economic globalization that has enabled the commodification of knowledge and information; particularly, in setting up institutions on manage the IP protection in Thailand. Also, this part aims to show the dislocated effect towards Thailand's public health conditions. After the Thai patent law was amended in 1992, pharmaceutical R&D projects have been blocked, a healthcare welfare was collapsed, and an access to medicines is limited.

⁶⁹ UNDP. *Thailand's Response to HIV/AIDS: Progress and Challenges*. 2004. p. 5.

A. Social Forces on the IP protection: the Collaboration of State and Market

In the light of a development of the IP protection, it can be argued that Thailand has been one among other countries influenced by the Washington umbrella. In other words, the neoliberal market economy that has embraced the commodification of knowledge and information has driven Thailand surrounds a market orbit. This section will discuss on the three pillars of an IP structure: Department of Intellectual Property, Ministry of Commerce; the three volumes of the Patent Act; and Pharmaceutical Research and Manufacturers Association (PReMA)

The first pillar revolves with the role of Department of Intellectual Property (DIP), Ministry of Commerce (MOC). As one of the prime state mechanisms, DIP has long been serving the Thai governments in monitoring the intellectual property rights. In fact, this department is just situated on May 3, 1992 to complement a more complexity of international trade, particularly on a growing importance of intellectual property rights. Before a formal establishment of DIP, MOC had assigned the Department of Commercial Registration (currently the Department of Business Development) to be responsible for the protection of patents and trademarks. In the same time, MOC also assigned the Department of Fine Arts, Ministry of Education to be responsible for the protection of copyrights. Once the US, European countries, and Japan have paid attention to the IP portfolios, MOC then integrated both organizations into DIP.⁷⁰

⁷⁰ Ministry of Commerce. *History of Department of Intellectual Property*. Web. http://www.ipthailand.go.th/ipthailand/index.php?option=com_content&task=category§ionid=17&id=104&Itemid=183. 11 June 2011.

Interestingly, even though DIP has been working for merely 19 years (up until 2011), this organization has earned lots of revenues each year.

Table 2: Revenues and Expenditures of DIP from 2004-2007⁷¹

Year	Revenues			Expenditures (Baht)	Profits (Baht)
	Fees	Misc.	Total		
2547	301.34	2.60	303.94	151.59	152.35
2548	304.28	9.28	313.56	134.55	179.01
2549	336.24	2.08	338.32	137.79	200.53
2550	357.93	3.09	361.02	158.34	202.68
Total	1,299.79	17.05	1,316.84	582.27	734.57

Based on table 2, DIP has received approximately 50% higher revenues than total expenditures. During 2004-2007, DIP is able to make a profit for 734.57 million baht. Among DIP's revenues, 99% of them have been based on fees of the IP procedures. Because of this, the more the requests on IP procedures, the higher revenues DIP receives.

Suffice to say, the establishment of DIP marks a turning point of Thailand's intellectual property policies: the amendments in Patent Acts, the amendments in Copyright Acts, the amendments in

⁷¹ Ministry of Commerce. *Budgets and Revenues*. Web. http://www.ipthailand.go.th/ipthailand/index.php?option=com_content&task=category§ionid=17&id=661&Itemid=549. 11 June 2011.

Trademarks Acts, the enactment of Trade Secrets Act, the enactment of Geographic Indication Act, the enactment of Product Designs Act, and the enactment of Biodiversity Act. This article focuses on the patent protection, in which DIP had supported to amend the Patent Act B.E.2522 as well as to establish the Intellectual Property an International Trade Court. Moreover, with a strong support from the Japan International Cooperation Agency (JICA), DIP was also initiating the Industrial Property Information Center in 1994. This center mainly proposes to collect and monitor data and information of patented products and trademarks around the world.⁷²

The second pillar focuses on the role of Pharmaceutical Research and Manufacturers Association (PReMA). Similarly to PhRMA, this organization has functioned as an exclusive club of global pharmaceutical companies branching in Thailand. Historically, PReMA was co-established by Henry R. Koczyk, CEO of International Pharmaceutical Inc., and Leonard Chan, Pfizer International Inc. in a name of "Pharmaceutical Products Association" (PPA), on July 9, 1970. Both of them proposed this club to be a center for pharmaceutical corporation branched in Thailand in order to deal with the

⁷² Banphot Hongthong. "WIPO National Seminar on the Implications of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)". Organized by *The World Intellectual Property Organization (WIPO)*, the Science, Technology and Environment Organization (STENO), and Government of the Lao People's Democratic Republic, held at Luang Prabang, Laos, November 28 and 29, 1996. Web. http://www.wipo.int/mdocsarchives/WIPO_IP_LQP_96/WIPO_IP_LQP_96_9_E.pdf. 6 August 2010.

Thai government. Later on, PPA was changed its name to “Pharmaceutical Producers Association” (PPA) in 1985.⁷³ Members of PPA have been actively arranged a monthly meeting to posture a club’s standpoint, and to exchange information one another; for instance, hospital factsheets, doctors’ profiles, pharmacies, or even ministers’ activities to facilitate a close connection. Furthermore, PPA also broadcasted its activities and promoted an advantage of the IP protection through newspapers, journals, and mass media.⁷⁴ Similarly to PhRMA’s strategy, PReMA also employed lobbyists to pressure and negotiate with the governments to protect its interests. The most successful task of them was on an achievement to amend the Patent Act B.E.2522, in which medicines products are subjected of patented, instead of merely manufactured procedures.

On September 29, 2004, PPA was again changed its name to “Pharmaceutical Research and Manufacturers Association” (PReMA). The purpose of changing its name is to show the club’s intention of promoting research and development activities as well as innovating new effective medicines.⁷⁵ In the light of a new philosophy, PReMA is now working under the formal slogan: “*Innovation Medicines... Healthier Life*”. With this slogan, PReMA devotes that the organization

⁷³ PReMA. *History of PReMA*. Web. <http://www.prema.or.th/about/history.php?menu=2&type=3>. 12 June 2011.

⁷⁴ Suchart Siriwattana. *The influence of transnational corporations in determining intellectual property protection policy in Thailand: the case of pharmaceutical products*. M.A. Dissertation in Faculty of Economic, Chulalongkorn University. 2539. pp. 91, 235 and 236.

⁷⁵ PReMA. *loc.cit.*

will “encourage innovation, providing a stream of new and better medicines that greatly improve the quality of life of consumers”⁷⁶ It must be noted here that a voice of PReMA is much loud enough to influence the Thai government decision-making procedures. Since having a close relationship with PhRMA and USTR, PReMA has successfully promoted the IP protection and intellectual property rights in Thailand.

The third pillar regards the three volumes of the Patent Act in which each amendment has been progressed towards the market benefit. The complex relations among the US administration, DIP, and PReMA have had a direct effect towards an enactment of the Patent Act in 1979 and the two amendments in 1992 and 1999 respectively. Thailand launched the first Patent Act B.E.2522 during the Kriangsak Chomanan Administration. Although paving the way towards the IP protection, this Act was still welcomed by NGOs and academics since it narrowly protected on manufactured procedures of medicines, not including products. Such a protection was a proper condition to create incentives and R&D in Thailand.⁷⁷ Not so long after the first enactment, Washington had put a pressure on the Thai government to amend the Patent Act as soon as possible. The US administration asked the Thai Patent Act to protect medicines and to expand the period of protection

⁷⁶ PReMA. *Promoting Intellectual Property Rights*. Web. http://www.prema.or.th/about_history.php?menu=2&type=2&Lang=en#. 5 May 2011.

⁷⁷ Kannikar Kijivechakul and Auyporn Taechutrakul. *Another Brave Walking of Doctor Riding Horse: Dr.Mongkul Na Songkla and the Issuance of Compulsory Licensing in Thailand*. 2007. pp. 31-33.

from 15 years to 20 years. To hearten the Thai government, Washington launched 'Trade and Tariff Act of 1984' allowing the President to terminate the Generalized System of Preferences (GSP) on any country that failed to provide the satisfied IP protection.⁷⁸

Not surprisingly, the Thai government decided to amend the Patent Act B.E.2535. This was to avoid "the Omnibus Trade and Competitiveness Act", in 1988, urging USTR to send an annual report indicating the IP behaviors of each country. Every country would be categorized into Watch List (WL), Priority Watch List (PWL), and Priority Foreign Country (PFC) ranking from the least severe to the most severe situation.⁷⁹ To avoid a tendency to a GSP termination and a PFC ranked report, the Anand Panyarachun government amended the Patent Act B.E.2535 inserting an 20-year extensive protection and a protection on medicine products. This content appeared to be amended 8 years in advance before the WTO requirement. This Act has significantly deprived a capability of Thailand on pharmaceutical research. The only one advantage of this Act was on an establishment of Drug Patent Committee. This body was responsible for monitoring and ceiling medicines' prices on an acceptable level. However, in spite of the Patent Act B.E.2535, the US administration remained Thailand on the PFC group. This situation forced the Chuan Leekpai government to issue the "Safety Monitoring Program" (SMP) or the

⁷⁸ Susan Sell. *Private Power, Public Law. The Globalization of Intellectual Property*

Pipeline Product Protection on May 31, 1994. This program had monopolized all patented medicines starting from January 1, 1986 to September 30, 1991. Such measure satisfied the US administration so that Thailand was moved to the WL group and was enlarged the GSP programs for several years. What make NGOs and academics most heartened was the amendment of Patent Act B.E.2542 by the second term of Chuan government. This Act collapsed the Drug Patent Committee and replaced with the Patent Committee chaired by the Minister of Commerce.

These three pillars inevitably affected the pharmaceutical industries and development in Thailand. The protection of knowledge and information in forms of patents impede societies to access medicines, generic drugs, or even block an opportunity to develop own medicines.

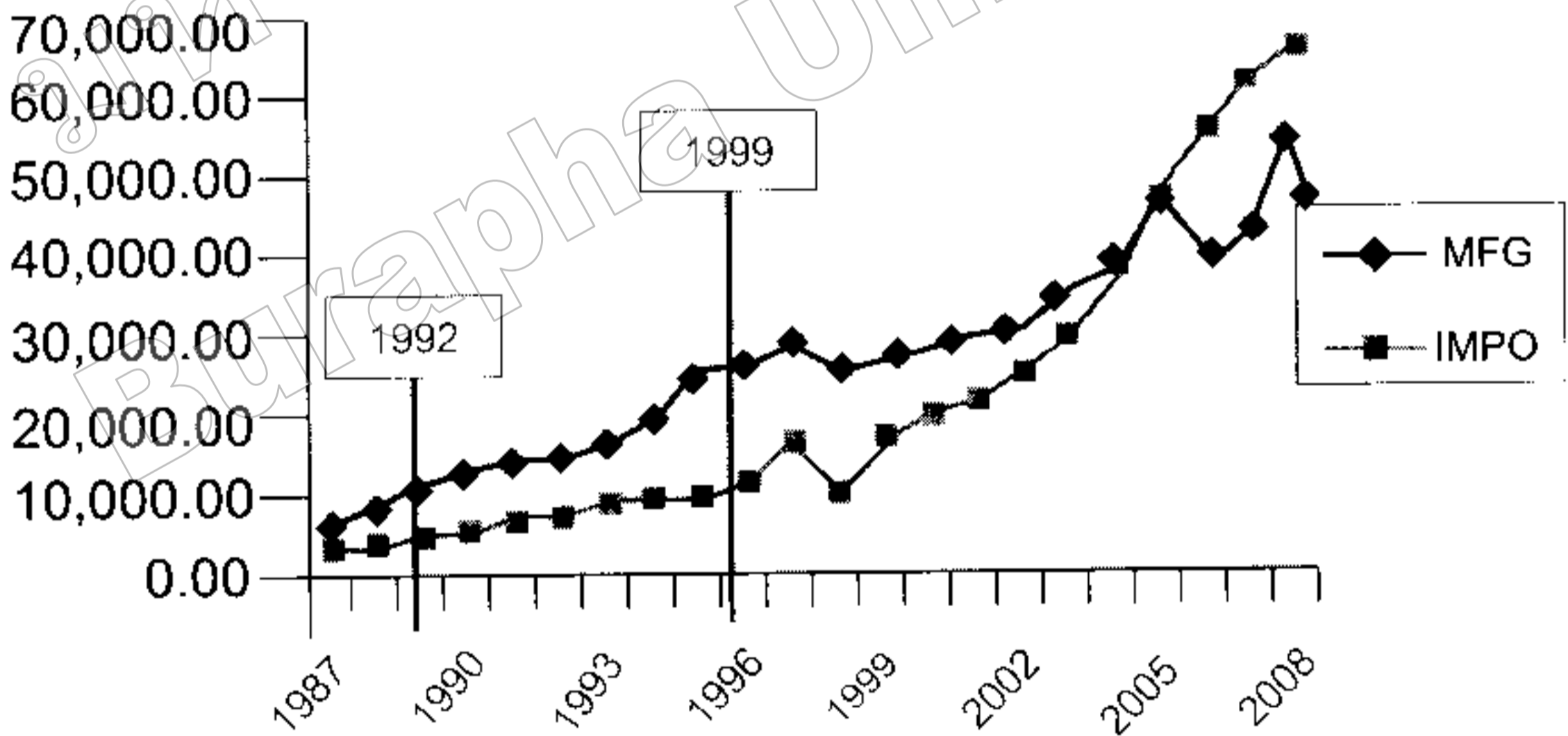
B. Effects on Health Security: the cessation of Thailand's pharmaceutical R&D

The triumphant of DIP, PReMA, and Patent Acts in Thailand have led to the failures in pharmaceutical R&D, healthcare welfare, and access to medicines. This section will explore two main dislocations deriving from the market: the cessation of R&D on medicines; and the increasing prices of medicines.

The first dislocation from the patent regime appears in the cessation of R&D projects on medicines. Base on statistics from the Thai Drug Control Division, Ministry of Public Health, it is a fact that a number of drug manufactured factories in Thailand are very limited

and much fewer when compared to those numbers of drug imported units. By 2010, there are merely 168 drug manufactured factories, by which 99 factories of them were situated in Bangkok, and the other 69 factories were in other provinces. In contrast, there were over 640 drug imported units, by which 552 of them were in Bangkok, and the other 88 were in other provinces.⁸⁰ These figures reflected a fact that Thailand was one among several countries where the government had much depended on an importation of medicines rather than a domestic manufacture.

Figure 1: A comparison between trends on values of imported medicines and manufactured medicines⁸¹



⁸⁰ The Thai Drug Control Division. *Statistics on Allowance of Business on Medicines in Thailand*. Web. http://www.app1.fda.moph.go.th/drug/zone_search/files/sea001_d15.asp. 11 June 2011.

⁸¹ The Thai Drug Control Division. *Values of Manufactures and Imports on Medicines in Thailand from B.E.2530-2551*. Web. http://www.app1.fda.moph.go.th/drug/zone_search/files/sea001_001.asp. 11 June 2011.

According to an above figure, Thailand has tended to import medicines (IMPO) in high volumes since the 1999 Patent Act. Similarly, the 1992 Patent Act has significantly deprived a capability of Thai pharmaceutical manufactures (MFG). Since 1987-2008, the value of Thailand's manufactured medicines reached, approximately 427,578 million baht; whereas, those numbers of value for imported medicines costed totally 402,325 million baht. Though these two numbers were quite appearing on the same level, the progressive line of import medicines was statistically higher than that line of pharmaceutical manufactures.

Moreover, medicines which have been produced in Thailand are basic medicines and low-complex medicines; for example, medicines on alimentary tract and metabolism, medicines on dermatologicals, or medicines on parasitology. On the contrary, for high-technological and complex medicines; like, medicines on blood and blood forming organs, medicines on cardiovascular system, medicines on general anti-infections systemic, or medicines on gento-urinars system and sex hormones, Thailand has been able to produce a little of them, and, thus, be forced to hugely import each year. The most critical case is medicines on antineoplastics, which are relevant to cancer treatments; Thailand has no absolute capability to produce them.⁸²

The second harmful effect on Thailand's public health structure is on the increasing prices of medicines. The mechanism is that the patent regime cuts out a competition from other drug companies to

research, study, or produce similar original products. Pharmaceutical corporation which own patented medicines have therefore an exclusive right in setting up medicines' prices regardless of costs or necessities. As we have seen, Table 1 above has shown the first five causes of deaths. It is apparent that HIV is the second factors of deaths in Thailand. This is meant that the Thai government has to import the number of medicines for providing HIV patients.

Table 3: A comparison between ARV medicines manufactured by GPO and those by patented medicines⁸³

ARV Lists by GPO	Expenditures per Months (Baht)	Expenditures per Months (USD)
AZT	840	20
D4T	210	5
3TC	600	14.3
Nevirapine	900	21.4
GPOvir	1,200	28.6
ARV Lists by patented version	Expenditures per Months (Baht)	Expenditures per Months (USD)
Efavirenz (MSD)	2,125	50.6
Indinavia (MSD)	1,716	40.9
Ritonavia (Abbot)	2,736	65.1

⁸³ UNDP. *op.cit.* p. 39.

Based on figures from table 3, prices of medicines manufactured by the Government Pharmaceutical Organization of Thailand (GPO) are ten times cheaper than those imported from original versions. The point is that, in a medical treatment, patients who have taken AZT for a period of time would inevitably be alleged. This occur forces them to change their ARV medicines; like, Efavirenz, Indinavia, or Ritonavia, in which they are more effective medicines. However, because of the high prices of them, only a few patients can receive these original versions. With no alternative, most of HIV patients died before a suitable time. In Thailand, those who died from HIV are mostly people aging between 29-40 years old, a vital generation on an economic development. Most of them die because they have no access to proper medicines. Since original medicines are very expensive, Ministry of Public Health cannot overwhelmingly spend enough to cover on every patient. The patent system is thus currently impeding a promotion on health security of individuals.

These two dislocations reflect the detrimental consequence on human security in health, or health security. As mentioned above, a case of Thailand is one among several countries that the IP protection has been now penetrating into their legal-politico structure. It is thus interesting to deeply conduct a research exploring other countries' conditions and atmosphere of how the market ideology has an effect on health security.

CONCLUDING REMARKS

This article argues that the one-size-fit-all IP protection under a market ideology reasserts an essential discussion on human security regarding a global health. A case study of Thailand has shown that its patent policy has deprived individuals' safety, rights, and equality in terms of healthcare. To support the above argument, this article presents contents into four main parts. The first part aims to briefly review a concept on human security in order to draw readers to a common understanding. An emergence of human security signals a paradigm shift from state-centric security, or traditional security, towards more individuals' issues. With a more complex condition in international relations, a narrow discussion on nation state, sovereignty, national interest, armament, or nuclear weapons are too simplistic and not enough. It is therefore necessary to provide room for concerning new topics; like, diseases, hunger, poverty, unemployment, crimes, social conflicts, discriminations, political repression, and environmental hazard. This article focuses on the global health issue, or health security, as one of important topic in the human security arena.

The second part proposes a linkage between human security and an issue on intellectual property right. Central to the notion of intellectual property, the neoliberal market has assigned prices on knowledge and information to serve a full commodification, an idea that knowledge can be treated as a commodity. In so doing, the roles of WTO and WIPO are indispensable in producing a singular globalised conception of the legitimate protection of intellectual property. Both bodies are mainly responsible for monitoring the global

IP regime, and regulating the IPR standardization. Suffice to say, the WIPO-WTO twin turbo has paved the way for global pharmaceutical corporations to reap and protect their huge profits in the name of a patent regime.

Following this part, the third section deals with a hot debate on global health, in which most scholars agree that the one-size-fit-all intellectual property protection has had an effect on the quality of health globally. Although proponents of the IP protection argue that the IP regime would bring create innovations and economic developments, but it is arguable that when such protection has commodified knowledge and information in the name of the market economy, it leads to dislocations towards societies instead of public goods. In other words, a one-size-fit-all protection will bring about destruction in people's lives instead of constructing well-beings for all.

The last part thoroughly presents a case study on Thailand where a patent policy has long been dedicated to the market ideology so that it impedes a way towards human security. The three pillars of an IP structure: Department of Intellectual Property, Ministry of Commerce; the three volumes of the Patent Act; and Pharmaceutical Research and Manufacturers Association (PReMA) has dislocated the Thai society and patients from the cessation of R&D projects on medicines as well as the increasing prices of medicines. All of these market implications exemplifies well on a need to discuss health security.

Angell, Marcia. *The Truth About the Drug Companies: How They Deceive Us And What To Do About It*. New York: Random House, 2005.

Banphot Hongthong. Lecture prepared for the "WIPO National Seminar on the Implications of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)". Organized by *The World Intellectual Property Organization (WIPO)*, the Science, Technology and Environment Organization (STENO), and Government of the Lao People's Democratic Republic. Held at Luang Prabang, Laos. November 28 and 29, 1996. Web. http://www.wipo.int/mdocsarchives/WIPO_IP_LQP_96/WIPO_IP_LQP_96_9_E.pdf. 6 August 2010.

Bhagwati, Jagdish. *In Defense of Globalization*. New York: Oxford University Press, 2007.

Capie, David and Paul Evans. *The Asia-Pacific Security Lexicon*. Singapore: Institute of Southeast Asian Studies, 2002.

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