

報告番号	※	第	号
------	---	---	---

主 論 文 の 要 旨

論文題目

Politics of Intellectual Property and Access to Affordable Medicines: Problems and Conflicts in Intellectual Property Rights Regime

(知的財産と入手可能な価格の医薬品へのアクセスをめぐる政治－知的財産権レジームにおける問題と紛争－)

氏 名

NILLSUWAN Benjamas

論 文 内 容 の 要 旨

The first chapter of the dissertation introduces the problematic issues involving intellectual property (IPR) protection and the concerns for countries with limited technological capabilities or low and middle-income countries, especially a problem of medicine patent and medicine price problems. Examples in some countries such as Brazil, India, and Thailand are given. Then two main questions are raised: for the policy-making at the international level how the IPR regime has changed, and how states and other actors respond to the IPR regime. The chapter identifies the methodology of the research, scope and limitations, and organization of the chapters.

In chapter two, relevant literature works are surveyed. As the research aims to seek IR/IPR analytical tools for the issue, it starts with IP politics studies, international regime studies, then the chapter explores the concept of regime complexes, regime shifting, and forum or venue shopping strategies.

In chapter three, four and five, the first research question is addressed. In examining the changes in the IPR regime, chapter Three starts by firstly exploring the background of the IPR protection in history and examining the expansion and internationalization of the rules into the global trade regime today. From the historical review from the fourteenth century to the eighteenth century, the nineteenth century to the current, three significant points are revealed. Firstly, the idea of protecting intellectual property initially departed from 'non-property,' to later cover 'property.' Secondly, the IPR protection that originated in Western countries has transformed from domestic laws of a few nations in Europe and then was internationalized to be global economic rules. And thirdly, IPR as one of the current trade rules has become much more comprehensive and broad than under the original standards. Three main components that were found crucial in shaping

the rules of the global IPR regime under the WTO are also presented in this chapter. They consist of dynamics of groups and interactions in the GATT and its successor organization, the WTO, the influence of business actors in the rule-making at the WTO, and the third is the role of the United States as a key driver of the IPR agenda at the global level.

Chapter four then focuses on the contestation and conflicts in the current global IPR regime. This chapter discusses the path of the global IPR regime formation which results in the limiting of policy space of countries participating in international trade under the WTO rules. Events that have manifested tensions between public health goals and respecting the IPRs in connection to some IPR issues in Thailand's context. Also, the Doha Declaration in 2001 as the change of TRIPS Agreement are discussed in details.

Chapter five then points out the increasing interactions among nations in several areas, the complexity of international regimes. The IPR regime as well demonstrates the complexity of the involved multiple international organizations, international treaties and rules, and actors in the governmental and business sectors. With the emerging trend of the Post-TRIPS era, the recent regional trade talks like Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP) are introduced.

In sum, chapter three to five demonstrate the transformation of IPR rules, and in the post-TRIPS era, changes are also observed. For example, the CPTPP and the RCEP and other bilateral trade deals that states are pursuing, show that multilateralism under the WTO rules is challenged by other ways of talks, such as regional and bilateral trade agreements. IPR protection regime which was transformed from the past is now continuing to be robustly presented into current regional and bilateral trade talks. The more regional and bilateral deals show that nation-states nowadays are tremendously relying their economies on trade and investment. The multilateral approach in global institutions may face more frequent deadlocks or disruption. Increasing regional and bilateral trade deals may lead to more contestation with other non-trade issues and policies.

In Chapter Six, the second research question is addressed by examining the empirical case of Thailand's experience in implementing government use of patented HIV/AIDS drugs during 2006-2008. The concepts of regime complexes, regime shifting, and venue or forum shopping, which were previously reviewed in the literature survey part, are used to examine the Thai case. Specific regimes and actors that involved in the Thai case are identified and presented. In examining the case of Thailand, this research presents the four elements as background in the context of Thailand's trade policymaking. The features that shaped the rationale for actors to

move to other regimes or forums are; the economic relationship with major power states (in this case the United States), the conduct of economic actors, the compliance with the international IPR regime, and the existing national policy on HIV/AIDS and medicine prices. This chapter also discusses the related Articles in TRIPS Agreement, the Doha Declaration and the Thai Patent Law B.E.2522 (1979) in the experience of Thailand in exercising medicine CLs during 2006-2008.

Two remarks are drawn from the case study. First, the findings from the case study lend support to the needs to be aware of international regime complexes and the use of the political strategy of regime shifting in contemporary trade politics.

Second, the conceptualization of regime shifting and forum shopping helps to reveal some implications for developing countries. This research has added to the existing literature in three ways. *First*, the incentive or the rationale for actors to choose the regime-shifting strategy and the finalized rationale of the actors for public health goals to perform the regime shifting is driven by the expected negative post-rulemaking consequences that actors face in the aftermath of a policy decision. The context of international trade policy-making needs to be considered to understand the rationale or the necessity of using regime shifting. *Second*, the process of regime shifting also includes, on the international level, reaching out to the authorities in other powerful states and IOs in the developed world. This research indicates that reaching out to authorized personnel or influential public figures abroad needs careful anticipation for approval and supports. At the national level, regime shifting by only domestic health advocates would not have been sufficient without the leadership and firm determination of key bureaucrats in pushing for the CLs decision and standing firmly against any confusions and misinformation in the public media. It also gives rise to the questions of whether this kind of strategy is mostly on ad hoc or experimental basis or if it can be useful in dealing with frequent conflicts in any highly contentious debate on international regimes. *Third*, multiple actors collectively participate in regime shifting strategies. Drawn from the case study of Thailand, public bodies such as the National Human Rights Commission, key bureaucrats in public health, non-governmental organizations, and international and domestic activists joined together in making access to HIV/AIDS medicine a matter of public health interest and human rights. Meanwhile, multinational companies and the U.S. also moved the strong IP agenda to another negotiation venue, that is, a proposal of a bilateral trade agreement with the more stringent IP protection requirements.

Regarding the patented medicine problems in Thailand case, this research suggests that multiple actors such as the government, public health bureaucrats, international and domestic civil society actors may collectively bring their agenda away from trade and innovation promotion (with IPR protection as a mean) to the protection of public health at various levels of public health and

human right governance. Multiple actors also include International organizations, national agency, and politically influential figures in major power states. In sum, the complexes of the global IPR regime provide ways for social activists and patients that seek more access to expensive antiretroviral drugs to make their voice heard in public health and human rights policy venues, rather than IPR. However, the outcome of campaigns through various agencies and organizations can be different among countries. The experience of Thailand showed that proactive effort of the government in seeking support from authorities and people in charge of health and human rights regime, the necessity of the medicines, the affected number of patients, and the firm cooperation among government, bureaucrats, and civil society actors were crucial to the strength of the anti-HIV advocacy.

Chapter seven is the concluding chapter. It revisits this research and implies the importance of regime complexes studies. It points out increasing potential, but avoidable, conflicts of norms in WTO law as a part of international law, normative justifications are needed and suggested to be future study. This chapter then summarizes answers to the first and second research question. Changes in the global IPR regime which is discussed in chapter three to five are connected to the transformation and expansion of the future IPR regime. From this medicine CLs dispute case in Thailand, IPR regime complex and the use of political choice of regime shifting in contemporary trade politics are demonstrated through the Thai case. Implications for IR and policy scholars and some recommendations are provided.