



Philippine Intellectual Property Rights under the World Trade Organization, 1995-2005: Implementing the Flexibilities under a TRIPs- Plus Commitment

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ABSTRACT. More than ten years since the Philippines acceded to the General Agreement on Tariffs and Trade-World Trade Organization (GATT-WTO), a review of the Philippine commitments to the treaty is yet to be done. This paper inquires on how commitments to the WTO have altered the Philippine intellectual property regime. It examines how the Philippines implemented its commitments to the Agreement on Trade-Related Intellectual Property Rights (TRIPs) in particular, and how the country is able to maximize the flexibilities provided under the TRIPs. This paper argues that while TRIPs may have been a project of the industrialized world with the support of key and influential industries to protect their corporate interests, the flexibilities offered by the agreement to developing and least-developed countries can be used to benefit public interest, particularly in the area of public health policy. In so doing, it is imperative upon the government to institute changes in its policy regime to make its existing intellectual property system responsive to public interest. Focus will be made on the implementation of flexibilities through legislation that intends to provide quality and affordable medicines as a matter of public health policy.

KEYWORDS. WTO · GATT · TRIPs · Intellectual Property Code · Philippine intellectual property · public health policy

INTRODUCTION

The inclusion of intellectual property in the General Agreement on Tariffs and Trade (GATT) further emphasized the disagreement among developed, developing, and least-developed nations on how development can be spurred through technology and knowledge transfer. On the one hand, developed countries see intellectual property protection as a means of encouraging innovation with economic returns to the creator of knowledge. Protection of intellectual

property, however, is seen by developing and least-developed nations as another barrier to the diffusion of technology that raises the cost of development. In according private ownership to intellectual property, two conflicting interests in the domestic intellectual property regime emerged by virtue of the two traditionally accepted purposes¹ of the intellectual property system: that of inventors who are given the right to reap the monetary returns of their invention versus the interest of the larger public in the form of access to technological advancements resulting from inventions (Villanueva 1995). Granting of rights to intellectual property impacts the general welfare because of the inherent conflict between the incentive purpose of intellectual property and public access to technology and its derivatives. It is an incentive system because its primary objective is to encourage innovation and creation for the common good. As such, it should benefit the public because with innovation and creation, the lives of people are dramatically improved. However, since the incentive is in the form of a property right, unless the rights are regulated, the right holders can impede the creation process and access to the technology.

Three contradictions in the intellectual property regime are also revealed: 1) intellectual property as private property or as a privilege granted by the state; 2) the system as a facilitator of technology transfer or as the constricting consequence of effectively protecting creations, inventions, and innovations; and 3) inventor interest versus public interest. The right of the inventor to the economic rewards of his creation inherently awards a “temporary monopoly on the right to use the patented invention” to the inventor, which “limits the availability of the patented products” (Villanueva 1995, 2). Thus, restricting competition and access to the creation are the unfortunate consequences of conferring an exclusive right, making state intervention through regulation imperative to balance private and public interests (Villanueva 1995, 2-3). This is especially emphasized as intellectual property protection covers vital industries in the economy (see table 1). Intellectual property laws are purported to facilitate and encourage pursuit and disclosure of innovation into the public domain for the common good (Gonzales 1999; Dolfsma 2006; Sell 2004). Some advocates even claim that protection of intellectual property rights will spur economic development (Chang 2001; Sell 2004). Perelman (2003) and Dolfsma (2006), however, critique the enforcement of intellectual property rights as a means to diminish the usefulness of the protected product, particularly in terms of restricting modification of

Table 1. Types of intellectual property rights, coverage vis-à-vis main fields of industries

Type of intellectual property right	Industries	Coverage
Copyright and other related rights	Printing, entertainment (audio, video, motion pictures), software, broadcasting	<p>“The expression of an idea, not the idea itself; protection is only extended to the form in which an idea is expressed”</p> <p>Original authors of literary, artistic and scientific works; computer software and databases</p> <p>Neighbouring rights are accorded to phonogram producers, performers, and broadcasting organizations”</p>
Trademarks	All industries	<p>Signs or symbols to identify services or goods</p> <p>Owners can exclude imitations to mislead the public</p>
Geographical indications	Food and beverage industry	<p>Appellations of origin of wines, spirits, cheese and other food products; exclusive attribution of natural and human factors of the place in which the products or services originate</p>
Industrial designs	Clothing, automobiles, electronics, etc.	<p>“Ornamental or aesthetic aspect of an industrial article . . . characterized by their appeal to the eye.”</p>
Patents	Chemicals, drugs, plastics, engines, turbines, electronics, industrial control, and scientific equipment	All types of processes and products
Layout designs of integrated circuits	Micro-electronics industry	Original layout designs or topography of integrated circuits
Trade secrets	All industries	List of clients, recipes, and other secret information that can be an enterprise’s most valued asset
Breeders’ rights	Agriculture and food industry	New, stable, homogeneous, and distinguishable plant varieties
Utility models	Mechanical industry	Functional aspect of models and designs, generally in the mechanical field

Source: South Centre (1997, 3, 5).

products to prevent infringement. Instead of promoting cooperation and independent collaboration in scientific pursuits, it poses a barrier to further scientific and technological progress (Dolfsma 2006; Perelman 2003). Sell (2004) even poses the question as to whose public interest do intellectual property rights serve as stakeholders of innovation include a variety of groups and interests.

This conflict of interests became more apparent in the 1960s when developing countries proposed a preferential treatment to catch up with their industrialized counterpart in the international patenting regime, then under the Paris Convention.² With multinational companies owning a large proportion of foreign patents under the domestic patent system, developing countries contended that the international patent system did not serve to encourage innovation and technology transfer (Villanueva 1995, 5). As generators and sources of patent-protected technology, multinational corporations (MNCs) have used the system to “maximize corporate profits” (Villanueva 1995, 5; Sell 1995; Kusumadara 2000) through global patent holdings³ and patent pooling or cross licensing.⁴ This negates the argument of industrialized countries that stronger intellectual property protection is needed to spur development.

Intellectual property used to be exclusively a matter for domestic law (Chang 2001; Sell 1995; Villanueva 1995). However, beginning in the latter part of the twentieth century, the domestic intellectual property agenda has been largely driven by international pressures. As a key competitive strategy “[i]n the context of a global knowledge-based economy, the protection of creations, inventions, and innovations has become a priority in the competitive strategy of powerful economic industries and countries” (Intellectual Property Office 2007, 2). In the United States, for instance, industrialists lobbied for the inclusion of intellectual property protection in the ambit of trade. Because most of the United States’s advantage in trade is hinged on their intellectual property base, enforcement of protection abroad was pushed to counter the threat to their competitive edge and has been at the top of the agenda (Sell 1995; Kusumadara 2000). The assignment of rights to products and process is also questioned, particularly in the context of an expanded scope and length of holding rights in the current intellectual property regime (Dolfsma 2006; Perelman 2003).⁵ However, despite the misgivings of developing and least-developed nations, contested international conventions⁶ on protecting the products of man’s creativity and innovation continue to be in force. In a last-ditch

attempt to protect industrialized countries' competitive advantage in the area of creative and scientific knowledge production, major industry players from industrial countries led by the United States submitted a document entitled, "Basic Framework of GATT Provisions on Intellectual Property, Statement of Views of European, Japanese and US Business Communities" in June 1988 (Consumer Project on Technology). Reflecting the proposals of the United States on intellectual property protection, the suggested international standards were embedded in the Agreement on Trade-Related Intellectual Property Rights (TRIPs). To get developing countries to agree with it, developed countries dangled the market-access carrot, along with an assortment of trade concessions to ensure greater protection of intellectual property goods (Villanueva 1995). Finally "succeeding" in the attempt to place intellectual property under the umbrella of the GATT-WTO, the TRIPs Agreement became part of the rules and discipline of the multilateral trade agenda. The draft legal text was submitted by industrialized countries that include the European Commission, the United States, Japan, Australia, and Switzerland (Gervais 2005; Sell 1995). Touted as the most comprehensive, and indeed the most ambitious, international convention to protect intellectual property, it sets the minimum standards of protection for traditional and nontraditional⁷ intellectual property under a multilateral regime, as well as provide for mechanisms for enforcement⁸ and dispute resolution. The more ambitious attempt of the TRIPs is to harmonize and standardize intellectual property laws globally. The TRIPs agreement upholds three general principles, which include national treatment,⁹ most-favored nation,¹⁰ and international exhaustion of rights¹¹ (South Centre 1997, 15-16; Villanueva 1995; Lanoszka 2003). However, the detailed provisions in the agreement that pertain to judicial and administrative procedures related to rights enforcement, as well as specific rules to curb trading of counterfeit goods retain the relative autonomy of member countries in crafting legislations at the national level. For instance, Article 27.3b of the TRIPs provide that member-states can opt to determine the patentability of life forms, specifically plants and animals but, on another point, requires them to legislate the protection of plant varieties through a patent system, a sui generis system, or a combination of both systems (World Trade Organization 2001c).

As a negotiated text subject to interpretation, the TRIPs agreement also contains flexibilities, especially in the area of public health, which

developing countries can use to their advantage. These include transition periods for developing and least-developed nations, compulsory licensing,¹² public noncommercial use of patents/government use authorization, parallel importation,¹³ exceptions from patentability, and limits on test data protection (South Centre 1997; Masungu and Oh 2006). These flexibilities would give developing and least-developed countries the elbow room to navigate a rules regime heavily influenced by corporate interests. Some advocated for more flexibilities but work should continue to eventually pull out of the agreement (Sahai 2000), while some would prefer to maximize whatever benefits developing and least-developed countries can gain through the flexibilities under the TRIPs (Masungu and Oh 2006). The TRIPs is also explicit, for the first time in international agreements on intellectual property protection, in stating technology transfer as one of the intents of the international patent regime (World Trade Organization 2001c; Villanueva 1995, 22-23). However, as intellectual property protection has become part of a multilateral trade system, developing countries are trapped in the frame of accessing markets in industrialized countries, relegating the technology-transfer objective of the intellectual property protection regime in the backburner. Instead of the system working for the multilateral resolution of trade disputes, the TRIPs has made the imposition or threat of trade sanctions a legitimate tool against developing and least-developed countries when found that their intellectual property regimes fall short of international standards¹⁴ (Villanueva 1995, 29; Peria 2000). Investments in areas of agriculture and textiles, for instance, are used as a “reward” to pressure developing countries to achieve a relative degree of compliance (Peria 2000; Correa 2002, 262-263).

To date, there is no conclusive study yet on the impact of a strong intellectual property regime on a country's economy. Although studies have shown that weak intellectual property regimes tend to have a significant impact on the location of US foreign direct investments and research and development facilities (Lee and Mansfield 1996), other studies have shown that having a strong intellectual property regime does not necessarily translate into foreign direct investments (Braga and Wilmore 1991; United Nations Development Programme 2003). Several studies also challenge the claim of a positive relationship between a strong intellectual property regime and economic development (Chang 2001; Perelman 2003; Dolfsma 2006). Even the Working Party of the Trade Committee of the Organization for

Economic Co-operation and Development, in a declassified document, indicates that the “effects of [intellectual property rights] on [foreign direct investments] and trade *tend to vary* by a country’s level of economic development and by industry” (Organization for Economic Co-operation and Development 2003; emphasis added). It has, likewise, been shown that stronger patents have ambiguous effects on trade; they can increase imports (due to the lower deterrence costs and the increased effective demand due to the exit of local imitators) or they can decrease imports if the host-country firms hold the patents (Maskus and Penubarti 1995).

Despite the many misgivings about the TRIPs, developed and developing countries acceded to the TRIPs for several reasons. For developed countries, linking trade and intellectual property will solve the problem of enforcement. For other developed countries, such as members of the European Union, bringing intellectual property within the multilateral framework of the WTO will prevent unilateral trade reprisals such as those engaged in by the United States. This is shared by developing countries in agreeing to include TRIPs in the trade agreement. Also, developing countries were banking on a quid pro quo of better deals in the areas of agriculture and textiles. The TRIPs likewise provides for flexibilities for member states to tailor policy in accordance with national development (Villanueva 2006).

While contentious issues¹⁵ surrounding the agreement still exist, breakthrough was reached during the 2001 ministerial conference in Doha, Qatar when the Doha Declaration on Public Health was adopted by member-countries. The document recognized that intellectual property protection cannot trump the right of the state to adopt policies to protect public health. It also permits member-states to regulate practices that distort competition, particularly those governed by licensing agreements such as compulsory licenses (World Trade Organization 2001b; South Centre 1997, 21). The inclusion of the Declaration on the TRIPS Agreement and Public Health in the Doha Development Agenda (DDA) provided more flexible terms for member-countries, affording them the “right to protect public health” and “promote access to medicines for all” (World Trade Organization 2001a). The DDA recognizes the magnitude of public health concerns in many developing and least-developed countries that have been raised in the course of negotiations. The impasse during the Hong Kong ministerial in 2006, however, posed another roadblock in the minimal success that developing and least-developed countries have gained. As

the debate rages on with more controversial issues coming to the fore, the opportunity has presented itself for the Philippines to rethink what it has achieved in so far as its ten-year membership in the WTO is concerned.

While it is tempting to measure the impact of the TRIPs on the development of the country, as well as its contribution to the country's trade performance, this paper will limit its inquiry on how the Philippine intellectual property regime was altered by the Philippines's commitment to the WTO. It will examine how the Philippines implemented its commitments to the TRIPs and how the former is able to ultimately benefit from the flexibilities provided under the latter. Focus will be placed on Philippine public health policy, particularly in providing access to cheaper medicines to the country's largely poor population. This paper argues that while TRIPs may have been a project of the industrialized world, with the support of key and influential industries to protect their corporate interests, the flexibilities offered by the agreement to developing and least-developed countries can be used to benefit public interest, particularly in the area of public health policy. In so doing, it is imperative upon the government, as a matter of public policy to institute changes, in its policy regime. In the case of the Philippines, it still has to implement TRIPs flexibilities in its national public health policy to make its commitment responsive to public interest.

THE PHILIPPINE INTELLECTUAL PROPERTY REGIME

The Philippine intellectual property regime predates most of the major international treaties¹⁶ on intellectual property protection to which the Philippines is a signatory. It had established a legal framework on intellectual property rights protection even prior to the TRIPs as part of its colonial legacy. Its first intellectual property laws were passed during the Spanish colonial times, which include the Spanish Law on Intellectual Property of 1879 and the Spanish Patent Law of 1888, which were enforced in the Philippines (Peria 2000). The country passed its own landmark statutes on intellectual property protection, the Patent Law (Republic Act [RA] 165) and the Trademark Law (RA 166), in 1947. State policy on intellectual property was enshrined in the country's 1973 Constitution, then later in the 1987 Constitution.¹⁷ In installing an intellectual property regime, the government sought to encourage technology transfer, entry of foreign direct investments, continued access to international markets, and the protection and

securing the exclusive rights of scientists, inventors, artists, etc. (Gonzales 1999).

Its commitment to preserve intellectual integrity even prior to its accession to the GATT-WTO is demonstrated by the several legislations and issuances it has passed to continuously improve on the processes and mechanisms to enforce intellectual property protection.¹⁸ Much of the legislations on intellectual property however were patterned after US laws, which “made US laws practically applicable to the Philippines” (Peria 2000). Among its early laws on intellectual property in the post-Spanish period included RA 165 (the Patent Law), RA 166 (Trademarks Act), and Presidential Decree (PD) 49 (the Copyright Law), which was passed in 1972. Compulsory licensing of foreign textbooks was also provided by PD 285. Administrative mechanisms on intellectual property were relegated to the Presidential Inter-Agency Committee on IPR (composed of the Department of Trade and Industry [DTI], Department of Justice [DOJ], National Bureau of Investigation [NBI], Bureau of Customs [BOC], and the Philippine National Police [PNP]) in the early 1990s; the Videogram Regulatory Board, which was transformed into the Optical Media Board by virtue of RA 9239; and the Special Task Force on Piracy and Counterfeiting (DOJ) in 1998.

Acceding to the GATT-WTO

In 1995, the Philippines committed to the TRIPs agreement when the Philippine Senate ratified the Uruguay Round (UR) of the GATT. With an existing intellectual property system, the main task the Philippines had to undertake as part of its commitment to the TRIPs was to make its existing system TRIPs compliant. First on the agenda was the enactment of RA 8293 or the Intellectual Property Code (IP Code) of the Philippines in 1997. The IP Code primarily serves as a regulating framework that consolidated existing laws and issuances on intellectual property to facilitate technology transfer and dissemination, foreign investments, and continued market access for locally-produced goods. It created the Philippine Intellectual Property Office (IPO), which replaced the Bureau of Patents, Trademarks, and Technology Transfer, and is the lead agency mandated to take charge of all concerns relating to implementing provisions of the IP Code. Although the obligations under the TRIPs apply equally to all member-states, developing countries were allowed a longer period until January 2000 within which to implement the applicable changes to their national

laws. The Philippines, however, was quick to put to legislation the consolidation of the system on intellectual property protection.

The IP Code repealed all inconsistent provisions of existing intellectual property laws. It consolidated the patent, trademarks, and copyright laws of the Philippines into a comprehensive legislation. Claims have been made that the IP Code was passed in response to demands to further tighten enforcement of intellectual property laws in compliance with the Philippines's commitment to the WTO. It ensures the utmost protection of the rights of generators of intellectual property. In its strategic plan for 2007 to 2009, the IPO recognizes the challenge of "striking a balance between the interests of IP holders" and the Filipino public in general (Intellectual Property Office 2007, 6). It acknowledges the need to formulate policies and legislations to make the intellectual property regime more beneficial to both inventors and the public. To date however, the contribution of the IPO in crafting a responsive intellectual property legislative agenda is ambiguous.

Eight years since the Philippines implemented its commitments to the TRIPs agreement through the IP Code, the issue on intellectual property rights and trade remains contentious among various actors with different interests—government, consumers, farmers, and transnational corporations. Despite the misgivings of various sectors, substantial changes have been made to make the country's intellectual property regime compliant with the country's commitments in the UR-GATT. Among the significant changes introduced by the IP Code include the shift from first-to-invent to first-to-file system for patent application and the increase of the number of protection years from seventeen years, from the date of granting patent, to twenty years, after the date of filing. New systems are also being installed to facilitate a more efficient patent application process.

Note that changes in the system impact the behavior of firms or individuals who will be using the system (Dolfsma 2006). In shifting from the first-to-invent to the first-to-file rule, the system becomes more straightforward than having to go through the rigorous and oftentimes time-consuming process of determining whether the applicant is the first to have invented the product. The old system allows the protection of a product to commence only *after* the application has been completed and the rights awarded. This apparently puts applicants as rights holders at a disadvantage since rights to the product in other countries may already have expired while the application is still being processed in the Philippines. This disadvantage can threaten his market

Table 2. The old versus new intellectual property regime

Old laws	New law
<i>Trademark law</i>	
Use before filing for local application (which is not required when based on foreign registration)	Eliminated in the IP Code
Term of grant: 20 years renewable for 20-year periods	Term of grant: 10 years renewable for 10-year periods
Affidavit of use or non-use is required on 5th, 10th, and 15th anniversaries	Proof of use within 3 years of filing is required and affidavit of use should be filed within 1 year from the 5th anniversary
Supplemental Register is required to be maintained	Eliminated in the IP Code
Penalties for infringement	
<i>Patent law</i>	
First-to-invent system	First-to-file system
Period of grant of patents, licenses, etc.	
Inventions: 17 years	Inventions: 20 years
Utility models: 5 years plus renewals of 5 years	Utility models: 7 years without renewal
Industrial design: 5 years plus renewals of 5 years each	Industrial design: 5 years plus renewals of 5 years each
Opposition proceedings and examination	
No opposition proceedings and examination is mandatory	Examination is made only upon request [possibly with or without examination]
<i>Publication</i>	
Publication is made after the grant.	Publication is effected after 18 months from filing date or priority date.
<i>Penalties</i>	
Penalties for repetition of infringement are php10,000 and/or 5 years of imprisonment and the offense prescribes in 2 years	PHP100,000 to PHP300,000 and/or months to 3 years imprisonment and the offense prescribes in 3 years

Source: Chan Robles Virtual Library.

position. The new system, on the other hand, allows for protection to be exercised even while the application is still under process. While this may be a positive development for knowledge generators in general, this system change assumes that all inventors, particularly in the areas of patent protection and plant-variety protection, have equal capacity in terms of financial, information, and technical resources to file protection application. The real world, however, is replete with the unequal and inequitable distribution of these resources within and among countries. Attendant to this change is the additional three years of protection from seventeen years under the old system to twenty years under the IP Code. Table 2 provides a glimpse of the changes that have been made in the Philippine intellectual property regime under the IP Code.

An examination of the IP Code reveals that the Philippines has substantially complied with its obligations under TRIPs (see table 3). In fact, it is said to be a TRIPs-Plus legislation.¹⁹ In fact, some provisions of the IP Code provide more stringent standards than the TRIPs. In 2002, in consonance with the IP Code's provision on patents,²⁰ the Philippines passed the Plant Variety Act in 2002. The TRIPs, however, provides the option to exclude from patentability "plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes" (World Trade Organization 2001b). The Philippine Supreme Court also revised rules to provide for the issuance of civil writ of search and seizure for IP violations. The Philippines also became a party to the Patent Cooperation Treaty (PCT) in August 2001. It is ironic, though, that the IP Code's over-adherence to the TRIPs did not take advantage of the flexibilities allowed in the agreement.

While the promised benefits of the TRIPs Agreement is yet to be felt, proposals have been put forward to ensure that flexibilities under the TRIPs afforded to developing and least-developed countries are harnessed to promote public health and mitigate the impact of the patenting pharmaceutical products and processes (Masungu, Villanueva, and Blasetti 2004). Of course, there is also the need to balance the access to scientific and technological inventions and artistic innovations with protection of intellectual property rights holders. In 2008, the Philippines passed RA 9502,²¹ after three years of discussions and debates, not to mention a tug-of-war with the big players in the pharmaceutical industry.²² The new law contains proposals to maximize

Table 3. Comparison of the TRIPs and the IP code

Aspect	TRIPs	IP code
Copyright and related rights (performers, recordings, broadcasting organization rights).	a) Protection to expression (as in the Berne Convention)	√
	b) Computer programmes (sources or object code) treated as literary works	√
	c) Term of protection: minimum terms of 50 years from publication or creation.	√
Trademarks	a) Inclusion of trademarks for goods and services	√
	b) Term of protection: seven-year periods, renewal indefinitely	√
	c) Compulsory licensing not allowed	√
Geographical indications	a) Protection of geographical indicators that identify a good as originating from a certain place where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin	√ (but no IRR)
	b) Special protection for wines and spirits	√
Patents	a) All fields of technology, for products and processes for 20 years	√
	b) Patentability of plants and animals excludable (other than microorganisms); however, members are required to protect plant varieties through patents or a sui generis system	√
	c) Exceptions to exclusive rights: Article 30, limited exceptions allowed	√
	d) Article 31, compulsory licensing allowed under specific conditions	√
	e) Burden of proof reversed to the infringer of a process patent rather than the right-holder	√
Industrial design	Term of protection 10 years	5 - 5 - 5
Integrated circuits	a) Protection to layout designs for a minimum of 10 years	√
	b) No trade in protected design or a product containing an integrated circuit that contains a protected design	√
	c) Except in cases where the traders are unaware, and had no reasonable way of knowing, that the article contained a protected layout design, in which case, they are required to pay the right holder 'reasonable royalty'	√
Undisclosed information	a) Protection of commercial trade secrets	√ (but no IRR)
	b) Provision for protection of data for new chemical formulations needed for pharmaceutical or agricultural products against unfair commercial use, unless disclosure is necessary for public interest	√ (but no IRR)

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Table 3. (continued)

Anti-competitive practices	Freedom to restrict rights in case of anti-competitive practices due to abuse of intellectual property rights, and due consultations with other member nations	Limited to mandatory and prohibitive clauses
Enforcement	a) Fair, transparent procedures	√
	b) Review by judicial authority, no obligation to establish separate judicial system dedicated to IPR resolution	√
	c) Provisional measures and measures at the border need to be made available	√
	d) Provision for criminal procedures and penalties (imprisonment or monetary fines) in the case of trademark and copyright violations	√
Transitional arrangements	Transition periods for development countries (2000) and least developed countries (2005) subject to extension	√

Source: Villanueva 2006.

TRIPs flexibilities such as parallel importation and international exhaustion, early working doctrine, and government use.

WHO USES THE SYSTEM?

For the period of 1988 to 2005, application for patent protection peaked in 2000 with a total of 5,027 applications received from both foreign and local applicants (Intellectual Property Office 2004b). Of these applications, 76 percent come from foreign industrial property owners. The succeeding years, however, show a significant decrease in patent application for foreign industrial property owners (75 percent for 2001, 49 percent for 2002, 38 percent for 2003, 42 percent for 2004, and 43 percent for 2005) (Intellectual Property Office 2004b).

Figure 1 shows that there has been a decrease in the number of patent applications protection for inventions and an increase in applications for industrial design patents. Disaggregated data from the Philippine Intellectual Property Office shows that there are more local applications patents for utility models and industrial designs compared to those for inventions over a 20-year period (see figure 2). The higher percentage of application for patents for industrial designs and utility models (also called petty patents) may be attributed to the fact that the applications do not have the stringent evaluation process that application

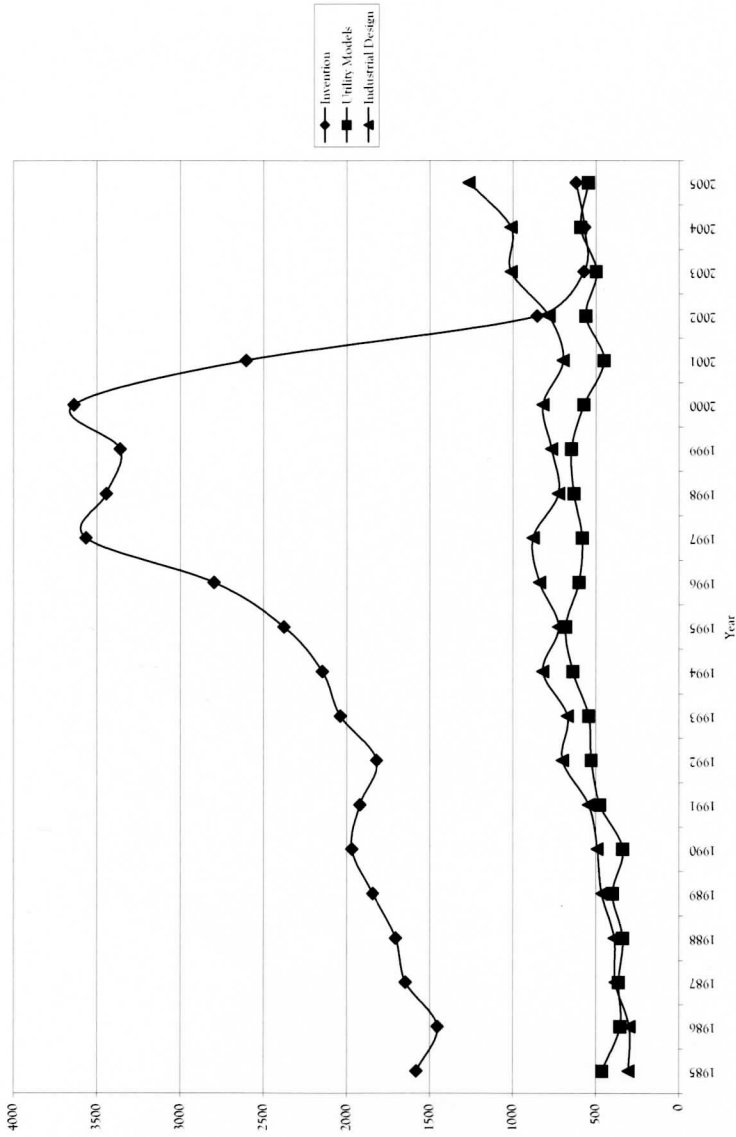


Figure 1. Patent application by type (1985 to 2005)

for invention patents undergo. Apart from the simple process undergone in applying for utility model patents, this form of protection is easier to obtain and sustain (Correa 2002).

Comparing the number of patents granted to both foreign and local applicants, a significant number of foreign industrial property holders remain to be holders of patent protection with as much as 99 percent of granted applications owned by foreign applicants. This indicates that technology transfer comes at a high cost for the Philippines.

Comparing the patent holders in the various categories of industrial property, local generators of inventions and industrial designs remain to be fewer than their foreign counterparts who have been granted patent protection. However, since 2002, a significant number of petty patent for utility models have been granted to local innovators than foreign utility-model originators. For countries like the Philippines, “utility models have played an important role in promoting incremental innovation and productivity growth” (Correa 2002, 91).

The low number of local patent applications and patents granted mean that foreigners remain the main industrial property holders in the Philippines, which means that, again, technology transfer is secured at a high cost (Villanueva 2006). This means that the patent system does not benefit our local inventors and innovators based on the patents granted to them in relation to applications they submitted to the Philippine Intellectual Property Office. Such outcome defeats the argument that stronger protection will encourage innovation and invention among our local knowledge and technology generators.

MAKING TRIPs WORK FOR PUBLIC HEALTH

Acceding to TRIPs is seen to undermine government efforts to “improve public health” because the adoption of intellectual property protection, through patents, would result to the increase in the prices of medicines and limit the options in pharmaceuticals (Biradar, Hunshyal, and Bhagavati 2006). Patents, they claim, have been put in place primarily to encourage the private sector in research and development of new drugs. In a country where multinational pharmaceutical companies dominate the drug market and hold a twenty- to twenty-five-year monopoly over products and processes, making the country’s WTO-TRIPs commitments work for public-health policy seems to be a daunting task.

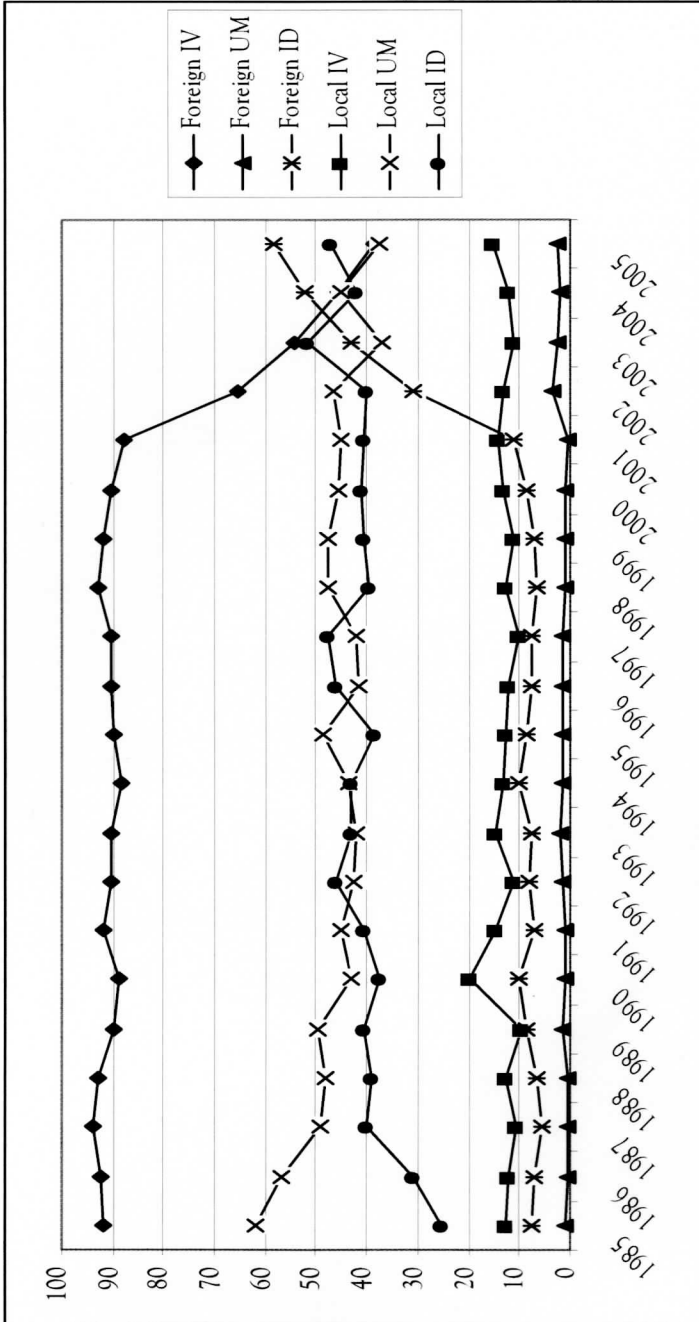


Figure 2. Number of patents granted (1985 to 2005)
Source: Philippine Intellectual Property Office 2004b.

The impact of the intellectual property protection on public health sector precedes the accession of developing countries to the TRIPs agreement. However, the enforcement of the agreement provided the impetus for the issue on public health to become more controversial during negotiations (Biradar, Hunshyal, and Bhagavati 2006). Concerns of developing countries centered on the impact of the adoption of a global intellectual property system on public health initiatives, particularly on how patent protection will impact the price of pharmaceuticals for their poor population. Biradar, Hunshyal, and Bhagavati (2006) recognizes the incentive the patent system provides for the private sector to invest in research and development for the discovery of new medicines. However, recovering their research and development investments have been used as justification for the high prices of medicines, which is identified as one of the direct impacts of the implementation of the intellectual property regime (Biradar, Hunshyal, and Bhagavati 2006). Correa (2002), however, contends that between a twenty-two-year period (1975 to 1997), only 1 percent of new chemical products was developed to cure diseases occurring in developing countries. He further argues that global research and development annually for diseases like tuberculosis, pneumonia, and diarrheal diseases account for a measly 0.2 percent (Correa 2002). Furthermore, strong intellectual property regimes in developing countries do not necessarily translate into research and development activities to respond to health-care needs of the developing world (Correa 2002, 267). Instead, protection of intellectual property has become a means for the pharmaceutical industry to protect their investments, particularly in the area of research and development of new drugs. Multinational drug companies' monopoly over the market, by virtue of the protection they hold over their patented products, also allows for price distortion to thrive. A study done by the South Centre in 1997 contends that

There is evidence that the patent system has a detrimental impact on pharmaceutical prices, particularly if the product itself is protectable. Even after a patent expires and competition from 'generic' products (which are protected by patents) develops, the original innovator is able to maintain, through brand loyalty, prices higher than those that would be realized in the absence of patents... national industrial development could be substantially hindered and there is likely to be an immediate increase in repatriated profits and royalties, which will have an impact on the balance of payments. (South Centre 1997, 38)

Table 4. Number of pharmaceutical patents issued to foreign and local companies, 2001 to 2005

Year	Number of foreign pharmaceutical patents issued to foreign companies	Number of local pharmaceutical patent applications issued	Total number of pharmaceutical patent applications issued
2001	448	1	449
2002	363	0	363
2003	351	0	351
2004	531	0	531
2005 ^a	404	0	404
Total	2,097	1	2,098

Source: Philippine Senate Committee 2006.

^a As of December 2, 2005.

Patents, particularly for products that prove to be lucrative, are used in countries in the South to curtail competition and create a monopoly that will allow for pharmaceutical multinational companies (MNCs) to sell drugs and medicines at exorbitant prices. (Correa 2002). Another impact of patenting under the existing intellectual property regime is biopiracy where local specimens used for developing medicines are applied for patent protection without due recognition to the source of the raw material. With patent protection, generic medicines, which provide a cheaper alternative, will not be able to enter the market until the patent expires (Ibon 2000).

In the Philippines, the import-driven, quasi-manufacturing pharmaceutical industry has not been spared from the adverse impact of a more stringent intellectual property system (Ibon 2000; Lao 1999). In 1999, “20 percent of all fully processed medicines available in the market are imported” (Lao 1999). As of 2002, at least 60 percent of the pharmaceutical market is captured by MNCs. The entire market is valued at PHP5.7 billion (Pharmaceutical Healthcare Association of the Philippines 2003). Eighteen of the top twenty pharmaceutical corporations in the Philippines are multinational drug companies. From 1998 to 2002, Philippine drug company United Laboratories topped the list with an 18.6 percent market share (Committee Report No. 79, Pharmaceutical and Healthcare Association of the Philippines 2003). As can be gleaned from table 4, 99 percent of pharmaceutical patents that have been issued from 2001 to 2005 are of foreign applications. This establishes the control of foreign pharmaceutical companies over drugs and medicines. Because of the dominance of foreign pharmaceutical companies in the Philippine market and the

Table 5. TRIPs flexibilities available for developing countries

Flexibility	Description/Status	Implications
Transition periods (Article 65)	<p>To give developing and least-developed member countries ample time to implement structural reforms in their intellectual property regimes.</p> <p>Has important implications on supply and availability of low-cost medicines</p> <p>The TRIPs Agreement provides for three transition periods. "Those relating to developed and developing countries have already lapsed" (Masungu and Oh 2006, xvi). The transition period for least-developed countries (LDCs), however, may be extended after it expires in 2016.</p> <p>One of these is the provision for a transition period where developing and least-developed countries are given "time to adapt the IPR system and to adopt measures that mitigate the impact of the new rules" (South Centre 1997, 25-26).</p>	<p>"Whilst the absence of pharmaceutical patents may or may not encourage the development and growth of the local pharmaceutical industries [in LDCs], at the minimum, its absence will ensure that patent rights will not be an obstacle to the supply of generic medicines" (Masungu and Oh 2006, xvii).</p> <p>"The expiry of the deadline has important implications on future supply and availability" of generic medicines that consequently impacts on prices and affordability of drugs (Masungu and Oh 2006, xvi).</p>
Compulsory licensing (Article 31)	<p>A legal requirement that allows other firms to produce a patented product under specified terms. Foreign patent holders may be required to license domestic firms to improve access to the patented product at a lower cost.</p> <p>It addresses the issue of access.</p>	<p>Requisites include inclusion of a compulsory licensing provision in patent laws, as well as specific proviso to determine issuance of license and remuneration schemes to "avoid ambiguity or uncertainty" (Masungu and Oh 2006, xvii).</p> <p>Explicit legislative and administrative procedures (Masungu and Oh 2006, xvii).</p>

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Table 5 (continued)

Flexibility	Description/Status	Implications
Public non-commercial use of patents/government use authorization (Article 31)	“Right of the state to use a patent without the consent of the patent holder for public health purposes...[G]overnment use of patents may be fast tracked” because the precondition for prior negotiations with patent holders are waived (Masungu and Oh 2006, xviii).	Explicit inter-agency administrative system and transparent decision-making processes and procedures (Masungu and Oh 2006, xviii).
Parallel importation	Response to concerns regarding access to affordable medicines (Masungu and Oh 2006, xix).	Widest scope of parallel imports Explicit legal provision for an international exhaustion regime in national patent laws (Masungu and Oh 2006, xix).
Exceptions from patentability (Article 30)	“Crafted to achieve objectives related to the promotion of the transfer of technology, prevention of abuse of intellectual property rights, and the protection of public health” (Masungu and Oh 2006, xix).	Early working or the Bolar-type exception as a “mechanism to facilitate the production of and accelerating the introduction of generic substitutes on patent expiry” (Masungu and Oh 2006, xix). “It is prudent for developing countries to exclude new uses of known products or processes from patentability, in order to promote access to medicines” (Masungu and Oh 2006, xx).
Limits on data protection (Article 39.3)	Test data as a basis to test “quality, safety, and efficacy, as well as information on the composition and the physical and chemical characteristics of a product” (Masungu and Oh 2006, xx)	“Developing countries should allow drug regulatory authorities to approve equivalent generic substitutes on the basis of reliance on the originator data from the time of its submission. They should implement data protection legislation . . . to facilitate the entry of generic competitors” (Masungu and Oh 2006, xxi).

price distortion this has caused, the Philippine Senate approved a bill in January 2007 that allows the parallel importation of patented drugs and medicines (Tan and Romero 2007). This was part of the proposed amendment to the IP Code of 1998.

According to the IPO, 3,118 pharmaceutical patents will expire from 2006 to 2015; 3,115 of which are foreign-owned (Intellectual Property Office 2004b). This indicates that the intellectual property system, particularly the Philippine patent regime, benefits foreign patent owners. Protection under the IP Code has led to a skewed scale between supply and demand of drugs and medicines, which distorted the pricing in pharmaceutical trade (Philippine Senate Committee 2006). This distortion, which resulted in high prices, impeded the public's access to affordable drugs and medicines.

PROSPECTS OF MAKING TRIPs WORK

While the TRIPs was made in the context of protecting corporate interests, it must not be forgotten that TRIPs still affords flexibilities for its member-countries (table 5). What may have been highlighted in discussions about the TRIPs is the attempt to standardize national intellectual property regimes. What seems to be taken for granted is the fact that “as a legal text, the TRIPs Agreement contains many ambiguities and loose definitions[,] which leave scope for differing interpretations to be incorporated in national legislation” (South Centre 1997, 47).²³

The importance of the political and legal context in implementing TRIPs flexibilities should also be underscored. This has been the case of South Africa and Kenya wherein both the incorporation in national legislation of TRIPs flexibilities, as well as the “sufficient political impetus” made it possible for these countries to implement the flexibilities to their advantage (Masungu and Oh 2006).

In drafting national legislation, minimizing the “potential economic and social costs of the reinforced and expanded protection of IP” should be taken into consideration, which requires the full use of legal skills and resources (South Centre 1997, 48). Policies that promote competition, local innovation and production, and widespread access to essential goods should be the foremost objectives of the IP legislative agenda. “Consultation and cooperation among [developing countries] to develop and subsequently implement model laws . . . as well as collaboration on training public officials” should also be undertaken (South Centre 1997, 49). Developing countries can establish a

“common strategy and coordinating their action at the Council for TRIPs and other bodies of the WTO dealing with intellectual property rights” (South Centre 1997, 50).

The basic economic rationale for government intervention, through state-granted intellectual property rights to the producers of new knowledge, is to reward such undertakings. However, as the Philippine case illustrates, local inventors, artists, and other creative and knowledge-generator sectors use the system to their advantage minimally. The two traditionally accepted purposes²⁴ of the intellectual property regime have not yet afforded local inventors the full extent of potential monetary returns because of their limited participation in the system.

Nine years since the Philippines passed its national law on intellectual property in accordance with its TRIPs commitments, there is still a failure to maximize the flexibilities provided in the agreement. This failure caused, for instance, by the absence of compulsory licensing petition after the IP Code took effect and was aggravated by dilatory tactics and petitions for injunctions filed by multinational companies. The Philippines also has adopted the domestic exhaustion principle instead of the parallel importation and exhaustion of rights. In effect, the Philippines or any third party is hindered to source a cheaper patented medicine from other countries if the patent within the country is still in force. Likewise, the stringent application of standards of inventiveness and novelty depends highly on the interpretation of standards. There is also limitation on the grant of new use patents. There is no provision for research and early working exceptions, as well as poor control—or lack thereof—of anticompetitive practices and abuses of intellectual property rights.

To remedy this situation, and in response to the intensifying battle between the Philippine public as represented by the government and large foreign pharmaceutical companies, several bills were filed in both chambers of the Congress. The more prominent among these many proposed legislation, which have gained multisectoral support, is the one filed by then-Secretary of the Department of Trade and Industry (DTI) and now-Senator Manuel Roxas III.²⁵ Salient features of the so-called Roxas bill include the proposed amendments to the IP Code that will redirect its framework to balance social and economic welfare and technological development. The proposed bill posited that the existing intellectual property rights legislation of the Philippines is deterrent to creating a competitive environment in the pharmaceutical industry. This, in turn, restricts the public access to affordable

medicines and drugs. Key amendments to the IP Code include: 1) the nonpatentability of new use of existing substances to prevent the extension of protection on substances and to facilitate the access to cheaper generic drugs; 2) parallel importation and international exhaustion for patents to encourage competition by increasing supply and depressing prices; 3) adopting the early working doctrine to allow generics companies to “experiment and test for regulatory approval of generic versions of a drug or medicine” prior to the expiration of its patent;²⁶ and 4) a provision for the government to exercise its authority to decide to use a patented product or process without the application of a public or private entity in the interest of public health, which may be opted under the TRIPs. This also provides for the protection of public officials, particularly from the Department of Health (DOH) and the DTI from lawsuits in determining conditions that allow government use of patented inventions such as medicines. The proposed legislation also allows for products obtained through parallel importation to enter the Philippine market. This is to ensure that owners of patented products do not hinder the entry of these products by invoking the provision allowing them to bar third parties from using their licensed marks and names.

While media coverage and public perception have largely been inclined towards the belief that pharmaceutical lobbying has contributed largely to derailing the passage of the bill,²⁷ dynamics among civil-society actors to participate in crafting this landmark national public health policy is more nuanced. Nongovernment organizations (NGOs) in the spectrum of the progressive Left are found to be a constant ally of the government, coalescing to form broad alliances under the banner of providing access to quality and affordable medicines for the country’s poor. Such organizations include the Cut the Cost, Cut the Pain Network (3CPNet)²⁸ and the Health Alliance for Democracy (HEAD).²⁹ As expected, the Philippine Healthcare Association of the Philippines (PHAP) argued that the passage of the bill will result in the upsurge in the entry of “fake” drugs in to the Philippine market, which may have adverse impacts on the consuming public. However, Correa (2002) argues that “there is no evidence that the parallel importation of medicines is taking place on a broad scale in developing countries,” contrary to the fear of the transnational pharmaceutical industry that it will erode their profits. Entry of counterfeit and substandard products is not attributable to parallel importation; instead, it is a matter of law enforcement of the state

(Correa 2002, 269). PHAP was perceived to be unsympathetic to a legislation that will benefit the Filipino public. The most contentious issue that almost undermined its passage is the “generics-only” provision in the House of Representative’s version of the bill. Organizations of medical professionals such as the Philippine Medical Association and the Philippine College of Physicians, along with other NGOs that have allied for this campaign, decried that this curtails the doctor’s right to determine what is best for their patients as well as poses the danger of destroying the doctor-patient trust.³⁰ Amidst the furor created by the perceived interference of corporate interests in public policymaking, what remains is the fact that government still holds the key to making public policy work for the welfare of its people. This will come in the form of mechanisms provided by national laws that international agreements such as the TRIPs allow.

CONCLUSION

Negotiating intellectual property rights requires that a “country has a sufficiently attractive internal market and/or has a sufficiently strong research tradition itself” (Dolfsma 2006). In the case of the Philippines, it has a relatively small market for it to be able to assert itself and its research tradition is not at par with other developing countries. Take the case of the Philippine pharmaceutical industry. It has remained to be “an importing, compounding and packaging industry that does not produce or manufacture its own chemical components . . . making it a quasi-manufacturing drug industry . . . Twenty percent of all fully processed medicines available in the market are imported” (Lao 1999, 8).

Caution also needs to be exercised when we say that we should shun the benefits of having pharmaceutical industries supply the country’s public health needs. What needs to be highlighted instead is the power of the government to regulate abusive and predatory pharmaceutical practices. There must be an understanding that patents have a more strategic purpose for firms rather than patents being the main means to claim the monetary benefits of innovative efforts. According to Dolfsma (2006, 338), “secrecy, lead time, and complementary capabilities” still put firms at an advantage over others. Furthermore, the patent race will encourage firms that hold the dominant position in the market to maintain its position by supplanting other firms with a similar product from market entry by patenting

rather than furthering technology development (Dolfsma 2006, 338). If local firms are not capable of imitating the exporter's technology, there is no need for stronger intellectual property protection because it will merely reinforce the market power of exporter and restrict trade (Organisation for Economic Co-operation and Development 2003).

Resisting Bilateral Trade Pressures

Notwithstanding TRIPs, industrialized countries call for greater IP protection—the TRIPs-plus standards. The challenge for developing countries like the Philippines is to resist TRIPs-plus standards that remove its flexibility to address its own developmental and public health needs. Free trade agreements (FTAs) between developing and developed countries, particularly the United States, “have been cited as having the potential to seriously undermine the use of the TRIPs flexibilities for public health purposes and for promoting innovation in respect to diseases that disproportionately affect” populations of developing countries (Masungu and Oh 2006). The promise of so-called net gains from these FTAs, however, is used as justifications for concessions in intellectual property that impact on access to medicines. “This net-gains analysis presumes that earnings in agriculture or other sectors due to increased market access, for example, would automatically translate into the ability to afford higher priced medicines” (Masungu and Oh 2006, xxvii). This discounts the fact, however, that these gains are enjoyed by only a segment of the population, and that it is actually “difficult to see how overall such . . . would improve the ability of citizens to afford higher cost medicines” (Masungu and Oh 2006).

Bilateral trade pressure to install a more stringent intellectual property system is not altogether new for the Philippines. In 1993, the Philippines responded to the Special 301 Priority List of the United States Trade Representative (USTR) (Trade Compliance Center) by introducing statutory amendments in areas of textbook reprinting, establishing institutional mechanisms to enforce intellectual property laws and prosecute infringement (Inter-agency Oversight Committee on Intellectual Property Rights in 1993, formation of the Special Task Force on Piracy and Counterfeiting by the DOJ, etc.), as well as the increase in penalties, sentence/term in jail, fines, etc.

In 2002, the USTR placed the Philippines under its Special 301 Priority Watch List because of its “inadequate and ineffective protection of IPR, particularly of US-made products and innovations.”³¹ Inclusion in the priority watch list serves as an indication of a country's poor

enforcement of intellectual property laws, which can be a basis of possible imposition of trade sanctions by the United States (Fishman et al. 2002; Ramos 2002). The Philippines faced the possibility of being slapped with trade sanctions should IP rights infringements remain unabated. An indirect effect would be the negative perception of foreign investors to establish businesses in the country. The United States claims that “local enforcement efforts have had little deterrent effect on the extraordinary level of copyright piracy” (Office of the United States Trade Representative).³² Aside from this, “it is also claimed that legislation to fully implement the [WTO] Agreement on [TRIPs] has been slow to develop,” which is contrary to the fact that the Philippines’s Intellectual Property Code passed in 1998 is TRIPs-Plus compliance (Office of the United States Trade Representative).

In negotiating bilateral trade deals with countries such as the United States, the Philippine government must keep in mind that it has established its principal negotiating objectives to further intellectual property protection (Villanueva 1995). Pressure politics, particularly involving the private sector, was the primary key in bringing the intellectual property protection agenda under the rubric of the GATT-WTO (Villanueva 1995, 18). Notwithstanding the silence of the GATT on intellectual property, “the US framed the protection of IPR as a trade issue by branding violations of IPR as unfair trade practices” (Villanueva 1995, 19). As Deveraux, Lawrence, and Watkins (2006, 7) puts it, “decisions are made in a political context through negotiations between governments, corporations, nongovernmental organizations, and interest groups . . . International trade agreements are highly political endeavors because they affect the distribution of both income and power.” It helps to remember why intellectual property right was put under the ambit of trade—because industrialized countries, that did not have domestic intellectual property regimes in the early stages of their development (Chang 2001) wanted to protect their interests while circumscribing the transfer of their technology to poorer countries. In an era when bilateral trade agreements are negotiated speedily, caution must be exercised as bilateral trade agreements can be used to stifle flexibilities afforded by the TRIPs (Office of the United States Trade Representative 2002).

“Negotiations of the TRIPs agreement were essentially an *asymmetric, non-transparent, and autocratic process* . . . the threat of unilateral retaliatory trade sanctions for instance, the USTR Special 301 Report, played a role in changing the stand of many developing countries” in

going into detailed discussion of standards in the agreement (South Centre 1997, 8; emphasis added). The vulnerable economic position of developing countries, as well as the limited knowledge on such a highly specialized field, was a factor that allowed industrialized countries, particularly the United States, to force their will on developing countries.

Empowering Potential Users

In order for the intellectual property system to be of benefit, it must be utilized by Filipino persons and entities. The patent portfolio must go beyond the recorded 5 percent of existing patents registered with the IPO Philippines. It must also be noted that a stronger IP regime does not readily result in development. A strong IP regime may be premature if local industries have not matured and if local industries have not embraced a patent culture (the Indian example). Intellectual property is merely a tool for development and should not be an end in itself. Whether intellectual property will promote development depends on the intellectual property regime's responsiveness to the level of development in the country. Currently, foreign industrial property holders are the users of the patent system. There is a need to create more awareness among our local knowledge generators to the benefits that such a system can provide.

From the Philippine perspective, to minimize the deleterious effects of TRIPs, the Philippines must maximize these flexibilities. To do so, the national government must conduct effective, meaningful, and comprehensive consultation with the various stakeholders of the affected local industries.

To counteract the inadequacy of the TRIPs Agreement in addressing the concerns of developing countries, developing countries should enact domestic legislation which would strengthen their anti-competition laws ... It is also imperative that constituents who would be adversely affected by patent monopoly must be empowered to challenge anti-competitive practices of patent holders ... the effects of unrestrictive business practices affect consumers and the expansion of the patent system affects farmers and indigenous peoples. (Villanueva 1995, 31)

While intellectual property regime can encourage invention, innovation, and creation of new products and knowledge, the negative effects "on the diffusion of new technologies and may be used to block further research and genuine competition" (Correa 2002, 272).

Pharmaceutical patents, in particular, have a different impact in the developing countries and another in developed countries. In this context, the problem of access to medicines and drugs may be responded to by “using pro-competitive measures allowed by the TRIPs Agreement, such as compulsory licenses, parallel imports, and exceptions to the patentee’s exclusive rights” (Correa 2002). It is imperative for national laws to integrate flexibilities allowed in the TRIPs agreement, especially on matters that impact the lives of the larger public.

A strong compulsory licensing regime “encourages local companies to have a stronger hand in negotiating with the rights’ holders who are usually multinational companies . . . It actually allows third parties to become competitors of patent holders” (Correa 2002). The Philippines, however, is not able to maximize the benefits of compulsory licensing under the pre-TRIPs old intellectual property regime because cases were not resolved even after the passage of the Intellectual Property Code. “As a net importer of technology, it is to our interest that the standards would be most stringent because we are not yet innovators” and it would be to “our interest to ensure that we only grant intellectual property if the stringent standards are met” (Villanueva 2006). And, indeed, if we adopt a strong intellectual property regime, then it is imperative to regulate it through competition policies and laws. Otherwise, the rationale behind having a strong intellectual property system, which is to ensure that the public has access to innovation and creation that would benefit the lives of the people, will be for naught. ❀

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NOTES

1. According to Villanueva (1995, 2), these are: 1) to give inducements to knowledge creators “to continue inventing products of social value; and 2) to provide a system of disclosure of technological advances.”
2. The Paris Convention, otherwise known as the Protection of Industrial Property, was ratified by mostly industrialized nations in 1883.
3. It serves to prevent potential competition in all markets (Villanueva 1995, 5).
4. “A method whereby patent holders pool together their patents for competitive products and through explicit agreements to reshuffle their monopoly privileges in order to divide the world markets [among] themselves and avoid competition” (Villanueva 1995).
5. This may be the case especially in countries where the first-to-file, instead of first-to-invent, system is adopted. According to Dolfsma (2006), this has implications on the behaviour of firms and individuals who are producers of intellectual objects.
6. Paris Convention on the Protection of Industrial Property (Paris Convention, 1883); the Berne Convention on the Protection of Literary and Artistic Works (Berne Convention, 1886); and the International Convention for the Protection of New Varieties of Plants (UPOV), which has been revised three times (in 1972, 1978, and 1991) since it was ratified by a handful of breeders from industrialized countries.
7. Traditional intellectual property includes patents, trademarks, copyrights, and other related rights while nontraditional intellectual property consists of geographical indications, integrated circuits, trade secrets, industrial designs, and new plant varieties.
8. This includes civil and administrative procedures and remedies, provisional measures, border control, and criminal procedures applicable to intellectual property protection enforcement.
9. The national treatment principle provides that “nationals of any member-country are to be treated in the same way as nationals of the country where protection is granted” (World Trade Organization 2001c).
10. The principle of most-favored nation is “the obligation to extend, with some limited exceptions, to any member the advantages granted to any other member or members” (World Trade Organization 2001c).
11. The international exhaustion of rights principle provides that “the title-holder cannot prevent the importation of a product on the grounds that its importation has not been consented to by the title-holder or the title-holder’s licensee. The application of this principle permits, for instance, the importation of a (legitimate) product from a country where it is sold cheaper than in the importing country, thereby helping to prevent market fragmentation and price discrimination by title-holders” (World Trade Organization 2001c).
12. “Compulsory licenses are authorizations granted by a government or a judge permitting the use of a piece of intellectual property without the consent of the title-holder” (South Centre 1997, 16).
13. Parallel importation, “as permitted under Article 6 of the TRIPs Agreement, would provide access to inputs or consumer products at the most competitive prices and conditions, and could become a significant component of industrial competition and consumer protection policies” (South Centre 1997, 28).

14. For instance, the US Trade Representative Office has the Special 301 or the Super 301 mechanism whereby sanctions (or threats of it) are given to countries whose domestic intellectual property protection is perceived as inimical to its corporate interests.
15. These include the “transition period” given to developing member-countries to calibrate their national regimes according to the TRIPs, patenting knowledge that are deemed common in developing countries by firms and individuals from industrialized countries, and the attempt to hinder the access of countries such as Brazil, India, Argentina, and Thailand to cheaper medicines for HIV/AIDS (Chang 2001).
16. The Philippines is a signatory to the following international treaties: Paris Convention (Protection of Industrial Property) in 1965, Berne Convention (Protection of Literary and Artistic Works) in 1951, Budapest Treaty (International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure) in 1981, and the Rome International Convention (Protection of Performers, Producers of Phonographic and Broadcasting Organization) in 1984. It is also a member of the Convention Establishing the World Intellectual Property Office (WIPO).
17. Article 14, Section 13 of the 1987 Constitution states that “[t]he State shall protect and secure exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be prescribed by law.”
18. These include Presidential Decree 1987, which created the Videogram Regulatory Board (now known as the Optical Media Board by virtue of RA 9239); Executive Order (EO) 60, passed in 1993 which established the Philippine Inter-Agency Committee on Intellectual Property Rights; EO 913, which aimed to strengthen the rule-making and adjudicatory powers of the Ministry of Trade and Industry for consumer protection; the Patent Law (RA 164); and the Trademark Law (RA 166).
19. Its TRIPs-Plus provisions include criminal liability for copyright infringement without qualification as to commercial scale; criminal liability for patent infringement for repetition of infringing acts; and application of domestic exhaustion principle (Villanueva 2006).
20. In its provisions on patents, the IP Code “allowed the development of a sui generis law to protect not only plant varieties but also animal breeds” (Peria 2000). The TRIPs, on the other hand, only provides for the protection of plant varieties. The IP Code furthermore provides that the “Philippine legislature can consider the protection of indigenous knowledge systems by providing a sui generis system of community intellectual property rights protection” (Peria 2000).
21. An Act Providing for Cheaper and Quality Medicines, Amending for the Purpose RA 8293 or the Intellectual Property Code, RA 6675 or the Generics Act of 1988, and RA 5921 or the Pharmacy Law, and For Other Purposes.
22. See Gamboa (2005); Domingo (2007); Cruz (2005a); Cruz (2005b); Capino (2007); Cahiles-Magkilat (2007); *Manila Bulletin* (May 15, 2007); *Manila Bulletin* (May 11, 2007); Fernandez (2007); Acosta and de Leon (2007); and Tan (2007).
24. These include the clauses on transition period, compulsory licensing systems, international exhaustion rights and other exceptions to exclusive rights, and specific solutions or approaches such as legitimate reverse engineering and a sui generis system to protect plant varieties.

25. See note 1.
26. The bill has been passed into law in June 2008 before the 13th Congress formally adjourned.
27. Generic companies will be allowed to engage in any activity that will facilitate the registration of a generic version of the drug; activities such as manufacturing in a commercial scale, stockpiling, marketing, distribution, and selling is not allowed until the patent expires.
28. See Gamboa (2005); *Philippine Daily Inquirer* (May 9, 2007); Domingo (2007); Cruz (2005a); Cruz (2005b); Capino (2007); Cahiles-Magkilat (2007); *Manila Bulletin* (May 15, 2007); *Manila Bulletin* (May 11, 2007); Fernandez (2007); Acosta and de Leon (2007); and Tan (2007).
29. 3CPNet is made up of non-government and community-based organizations calling for “the lowering of price and increase in access to drugs and medicines of Filipinos.” It was established in 2001 and has been engaged in campaign activities “discussing the cost of medicines in the country”. It has also been actively involved in public hearings to deliberate on the cheaper medicines bill in both the Senate and the House of Representatives (Cut the Cost Cut the Pain Network).
30. HEAD is a national organization of health professionals, workers, and students calling for the dismantling of monopolies of multinational pharmaceutical companies in the local market by establishing regulation of drug prices and the creation of a national drug industry.
31. The “generic versus branded” battle has been reduced to doctors protecting their interests to avail of the perks offered by pharmaceutical companies should they “promote” the brand when prescribing to their patients. It must be noted, though, that while both generic and branded medicines have the same active ingredient (the ingredient that produces the therapeutic effect), a difference may lie on the inactive ingredient contained in the medicine, which may affect the action of the medicine particularly in medicines for asthma and high-blood pressure (Marshall n.d.).
32. Special 301 Watch List is “an administrative mechanism designed to signal to foreign government officials the seriousness with which the US views IP problems in their countries” (Office of the United States Trade Representatives).
33. Take, for example, the case of Morocco when, in 2005, the Moroccan government intended to pass a legislation to ensure that costs of medicines are reduced to enable its more vulnerable population to afford these. However, its free trade agreement with the United States hindered it from doing so (3D 2006).

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