

Student Note

FILLING IN THE GAPS OF THE TRIPS AGREEMENT: REFLECTIONS ON THE TAIWAN-PHILIPS CD-R COMPULSORY LICENSE CASE

*Ching-fu Lin**

ABSTRACT

The Taiwan-Philips case concerns the legitimacy of Taiwan's granting of compulsory licenses at issue, the consistency of the Patent Act of Taiwan with the TRIPS Agreement, and Philips alleged anti-competitive practices regarding its exploitation of patents. This case is of extraordinary importance in Taiwan with respect both to Patent Act and Fair Trade Act. Similarly, it reminds us a number of issues regarding IPRs protection and competition maintenance under the multilateral framework. This article discusses the consistency of Article 76(1) of Taiwan's Patent Act with the TRIPS Agreement and the role competition-related provisions that the TRIPS Agreement can play in the present case.

* Research Assistant, Asian Center for WTO & International Health Law and Policy (ACWH). LL.B. and B.S. in Chemical Engineering, National Taiwan University, 2007. The author would like to record his deep gratitude and heartfelt thanks to Professor Tsai-yu Lin, Department of International Business, Soochow University, Taiwan and Yu-an Chen, Legal Associate, Office of Trade Negotiations, Taiwan. They have made many suggestions and willingly provided considerable assistance and very useful comments and inputs in going through this article. The author wishes also to acknowledge with grateful thanks the anonymous reviewers and editorial staffs of the Asian Journal of WTO & International Health Law and Policy. The author can be reached at b90504104@ntu.edu.tw.

Moreover, the author seeks to make the case that the TRIPS Agreement has created a platform from which further efforts to expand and strengthen the multilateral regulatory competition regime can be developed alongside the evolving framework of the WTO. With a focus on the relationship between competition and IPRs, this article proposes a two-track approach as a possible alternative for the stymied negotiations on competition policy under the WTO framework.

KEYWORDS: *compulsory license, WTO, TRIPS Agreement, competition policy, Taiwan, Philips, CD-R, patent*