

How the Marrakesh Model for the Visually Impaired Could Facilitate Access to Cross-Border Supplies of Patented Pharmaceuticals

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*The Doha Round's Public Health Legacy:
Strategies for the Production and Diffusion of
Patented Medicines under the
Amended TRIPS Provisions*

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Procuring Essential Medicines Under
The Amended TRIPS Provisions: The
Prospects For Regional
Pharmaceutical Supply Centers

Regional Pharmaceutical Supply Centers

Article 31

Other Use Without Authorization of the Right Holder

- (f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

Doha Declaration on the TRIPS Agreement and Public Health, of 14 November 2001 (para 4)

“We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all.

In this connection, we affirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.”

Doha Declaration

As regards parallel imports, the TRIPS Agreement leaves

- each member free to establish its own regime for ... exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4. (¶15(d))

As regards compulsory licenses,

- each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted. (¶15(b)).

Compulsory licenses, however, remained subject to the conditions set out in article 31 of TRIPS;
especially, the condition that bulk of drugs manufactured under a compulsory license should be sold only on the domestic market, and should not be exported.

To overcome this hurdle, Doha Declaration, para. 6, stated:

“We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002”.

TRIPS Council finally reached a compromise agreement on 30 August 2003, known as **Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health**.

This agreement took the form of a **temporary consensual waiver of article 31(f)** for specified purposes, adopted by the General Council of the WTO.

That waiver was just converted to a **permanent amendment of the TRIPS Agreement** on 6 December 2005, ratified in 2017, with the waiver still in effect until that time.

Types of Compulsory Licenses available under Paris Convention Article 5A

- Anticompetitive conduct
- Misuse (abuse)
- Government Use
- Public Interest
- Dependent Patents

Marrakesh Treaty to Facilitate
Access to Published Works
for Persons Who are Blind,
Visually Impaired, or
Otherwise Print Disabled

World Union of the Blind (WB)

Marrakesh Model

Authorized Entities

Accessible Format Copy

Beneficiary Persons

Governing Digitally Integrated Genetic Resources, Data and Literature: Global Intellectual Property Strategies for a Redesigned Microbial Research Commons

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