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Functions and Restraints of Compulsory Licensing: Perspective from TRIPS Agreement and Public Health

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Abstract

In the academia there are generally two positions about the practical function of patent compulsory licensing. In light of very few cases of compulsory licensing seen in the world, even though it is acknowledged both by the Paris Convention and the TRIPS Agreement, some commentators are skeptical of its function in the real life. In contrast, the other side holds that even if the real cases of compulsory licensing are scarce, the very existence of this regime can nonetheless afford a useful leverage for domestic industries in the licensing negotiation with foreign patent owners. Though both sides have their factual bases, they still fail to put forth convincing evidences and concrete reasoning for their positions. However, the wide spread of HIV/AIDS these years in Africa and Anthrax attack in the U.S. after September 11 have recently drawn people's attention to this issue. It has been hotly discussed and debated that whether the national governments, under the TRIPS Agreement, can exert the rule of compulsory licensing to force multinational pharmaceutical corporations to cut back their drug prices, so as to

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make certain drugs, which are essential for public health, accessible to the general public. This new development provides an excellent opportunity to review the functions and limitations of the compulsory licensing regime. This article will make use of the real situations and arguments emerging in HIV/AIDS and Anthrax cases to analyze this issue more thoroughly, and thereby to formulate and argue for some specific findings on the topic.

Keywords: developing country, pharmaceutical patent, bilateralism, international intellectual property law, World Trade Organization