

Amendments to TRIPs in order to ease access to medicines are now in force

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After the ratifications of 2/3 of WTO (World Trade Organization) members, article 31 bis was formally brought into the text of TRIPs Agreement. Such provision aims at allowing compulsory licenses for export in order to meet the needs of countries with insufficient or no capacity of manufacturing drugs. It is a direct result of Doha Declaration on TRIPs Agreement and Public Health of 2001, which aims at striking a balance between IP protection and access to health care.

In line with such amendment to TRIPs, a least developed country or a country that has notified the WTO (World Trade Organization) of its lack of capacity of manufacturing a specific drug in order to meet its own needs are eligible to obtain compulsory licenses to import such drug from a third country under special conditions. Such compulsory license shall be paid and limited to the purpose of meeting the needs of the importing country. Moreover, measures shall be taken to assure that the patentee rights shall not be hampered in the exporting country. In the past, there were negotiations concerning compulsory licenses for export during the Avian flu pandemic in 2005. Some Asian countries pressured WTO to allow compulsory licenses to import generic copies of Tamiflu®. Before any license was ever implemented, countries and the manufacturer struck a deal.

Article 31 bis formally entered into force on January 23.

We shall keep you informed about the next updates of this subject. In case you need further information on this topic, our legal and technical teams are at your disposal in our offices of Rio de Janeiro, São Paulo and Porto Alegre, as well as the email:

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