



REPUBLIC OF SOUTH AFRICA



Regional Seminar for Certain African Countries on the Implementation and Use of Several Patent-Related Flexibilities

***Topic 13: The Effective Administrative Process for the Grant
of Compulsory Licenses***

**Durban, South Africa
January 29 to 31, 2013**



**WTO-DTI Regional Seminar for Certain African
Countries on the Implementation and Use of
Several Patent-Related Flexibilities
*Durban, South Africa, 29-31 January 2013***

**Procedures for the grant of
compulsory licenses under the TRIPS
“Paragraph 6 System”**

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Authorities involved in IP

- Reference to the very informative presentations made by the delegates at Durban's Seminar
- Distribution of competences to authorities in matters involving IP . For example:
 - Offices dealing with intellectual / industry property (depending on countries and their institutional organization, under the Ministry of Justice, Ministry of Industry, Ministry of Trade and Industry)



Authorities involved in IP

- the formal Contacts points notified to TRIPS , e.g. the Intellectual Property Office if it covers also copyright), or the Industrial Property Office and the copyright Office, frequently the Ministry of Trade, the customs authorities (usually under Ministry of Finance)
- Others : Ministry/agency dealing with anti-competitive practices, Ministry of Health, Ministry of Agriculture, etc.



The Paragraph 6 System

- In a great number of countries, grant of compulsory licenses by the administrative authority, e.g. IP office,
- Subject to judicial review or review by another higher authority
- Why administrative avenue?
 - Not only because the constitutional/institutional convenience, but because in principle, administrative process of decision-taking is quicker



The Paragraph 6 System

- In case of patents and IPRs, the best placed is the IP office
 - To search for patents granted, patents in force , etc. at national level
 - Reminder: if no patent, no CL
- Role of regulatory authorities
- Police and internal market authorities if goods have entered
- Safeguard s and protection of third parties



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The Paragraph 6 System

- In some other countries, requests for CL to be made before the courts.
 - No comprehensive information available regarding duration of procedure
- Role of customs:
 - At export point of the products produced in the exporting country, if so provided by countries
 - At import point of the products imported under the paragraph 6 system
 - To avoid diversion (back to exporting country and other countries (apart those falling under the 3rd waiver regarding regional trade agreements))
 - BUT for developing countries and LDCs, it is subject to domestic capacities
 - Application of TRIPS enforcement measures by other countries



Consult our website

www.wto.org

Other questions to:

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