

Student Note

COMPULSORY LICENSE, A LONG DEBATE ON TRIPS AGREEMENT INTERPRETATION: DISCOVERING THE TRUTH OF THAILAND'S IMPOSITION ON PHARMACEUTICAL PATENTS

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ABSTRACT

This article investigates interpretative difficulty in compulsory licensing dispute by taking the Thailand case of imposition on medicines during 2007 to 2008 as a model for our study and consideration. The country's actions are arguably unique, aggressive and direct as per TRIPS wording which brings public a number of issues involved regarding her legitimacy and TRIPS requirements. Based on our analysis, the findings demonstrate that the problem of TRIPS's interpretation in the context of compulsory license can thus be solved by the use of Article 31 and 32 of the Vienna Convention, as a customary international law, and the Doha Declaration on Public Health, as a subsequent agreement. By doing so, Article 31 of the TRIPS shall be read together with Article 7 itself as its purpose is already stated in the Objectives therein. The relationship between the two should be perceived and constructed in a positive, forward looking and pragmatic way, as to keep a balance of public accessibility to medications and the exclusive right of patent owners. It would hence be worth of time spent in years of

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negotiation in the Uruguay Round before TRIPS and the Doha Declaration ended. Scholars and practitioners are urged and encouraged to analyze and provide comments restrictively basing upon legal elements and in the light of international laws, and also consistent with former adjudications. This would therefore diffuse misleading critics and incorrect interpretation; eventually render public accurate opinions and rational comments in practice that shall be latterly followed by Members of WTO.

KEYWORDS: *compulsory license, Doha Declaration, TRIPS, TRIPS Article 31, TRIPS objectives, public non-commercial use, Vienna Convention, VCLT Article 31, VCLT Article 32*